Quarterly Report

OF THE

ATTORNEY GENERAL

OF

ALABAMA

FOR THE PERIOD

FROM JANUARY 1, 1968

THROUGH MARCH 31, 1968

VOLUME 130

MacDONALD GALLION, Attorney General

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QUARTERLY REPORT

of the

ATTORNEY GENERAL

of

ALABAMA

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From January 1, 1968

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TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from January 1, 1968 through March 31, 1968, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MacDONALD GALLION
Attorney General

MacDONALD GALLION
Attorney General

R. Hunter Phillips
Executive Assistant

John G. Bookout
Deputy Attorney General

Assistant Attorneys General

Robert P. Bradley
Frank R. Broadway
David W. Clark
Paul T. Gish
Leslie Hall
Lloyd G. Hart
John Abner Lockett, Jr.
Randolph G. Lurie
Gordon Madison
William N. McQueen
Robert F. Miller
Marlin M. Mooneyham
James L. Screws
Lucian L. Smith, Jr.
Bernard F. Sykes
Walter S. Turner
John C. Tyson, III
Carl E. Watson

Assistant Attorneys General Assigned to other Departments

Highway:
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Edward H. Brogden
Mrs. Julia H. Griswold
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George D. Mentz
Jack Norton

Revenue:
Willard W. Livingston
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William H. Burton
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Mrs. Mary Lee Stapp
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Conservation:
William G. O'Rear
John D. Bonham

Examiners of Accounts:
James W. Webb

Finance:
James T. Hardin

Agriculture and Industries:
George O. Miller

OPINIONS

January 5, 1968

Miss Sarah E. Hines
Executive Secretary
Board of Registration for Professional
Engineers and Land Surveyors
64 North Union Street
Montgomery, Alabama 36104

Statutes—Engineers and Land Surveyors—Fees.

1. A statute becomes effective when it is approved by the executive, unless the Legislature extends the operation of the act until a future specified date.

2. A certificate of registration allowed to expire by reason of not effecting a renewal thereof under Title 46, Section 128(16), Code of Alabama 1940, becomes invalid.

3. A registered engineer, whose certificate expires, must make a new application for registration and meet statutory requirements now in existence before he can be granted a new certificate of registration.

Opinion by Assistant Attorney General Mooneyham.

Dear Miss Hines:

Your request for an official opinion bearing date of December 18, 1967, is as follows:

"Section 12, paragraph (h) of Act No. 739, passed by the 1967 Legislature, approved by the Governor on September 8, 1967 and which is to become effective on the 1st day of January, 1968, provides, 'For a period of one year from passage of this amendment, the Board, at its discretion, may exempt an applicant, who is a resident of Alabama and qualified under Section 12, paragraph (a)-(1), from taking the examination in fundamental engineering subjects.'

"Your opinion is respectfully requested on the following question:

"Should the period of one year referred to above be considered from September 8, 1967, date Act was approved by the Governor; or from January 1, 1968, date Act becomes effective?
"We shall also appreciate receiving an opinion regarding Expirations and Re-registration under Act No. 79, Extraordinary Session, 1961, Approved Section 15, 1961, as amended by Act of the Legislature, Approved September 12, 1966, specifically on the following question:

> "Under which Act or amendment shall an applicant, who has allowed his registration to expire by non-payment of renewal fee, and who now wishes to become re-registered, be considered? Example: John Doe, registered in 1956 under Section 12 (a)-(1) which required four years of experience in addition to a degree, allows his registration to expire in 1965. He applies for re-registration in 1968. Should he be required to pass a written examination which is to be required of all applicants beginning January 1st, 1968, or may he be considered under the provisions of the law in effect at time of his original registration?"

In answer to your first inquiry, it is my opinion that the one year referred to above began to run on January 1, 1968, the date the Act became effective, and not September 8, 1967, the date of approval by the Governor.

Generally a statute becomes effective on the date it is approved by the executive. **Stone v. State,** 20 Ala. App. 69, 101 So. 58, Certiorari Denied; **Ex Parte Stone,** 211 Ala. 601, 101 So. 62; **State v. Stearns,** 200 Ala. 405, 76 So. 321; **Montgomery Tractor Co. v. Knabe,** 158 Ala. 458, 48 So. 501. But the Legislature has the authority to defer the operation of an Act until a specified future date. **Norton v. Lusk,** 248 Ala. 110, 26 So. 2d 849.

It was expressly provided that the Act in question should become effective on the 1st day of January 1968. Therefore, the one year discretionary period invested in the Board began to run on January 1, 1968.

In answer to your second inquiry, it is my opinion that if an individual allows his certificate of registration to expire for nonpayment of renewal fee, and this expiration continues beyond the ten-month grace period as provided in Title 46, Section 128 (16), Code of Alabama 1940, then the individual upon re-registration must make an original application and meet the statutory requirements which are now in existence before he can be granted a new certificate of registration. Quarterly Report of Attorney General, Vol. 50, p. 115; Quarterly Report of Attorney General, Vol. 33, p. 44.

Title 46, Section 128(16), Code of Alabama 1940, Recompiled 1958, provides as follows:

> "Same; expirations and renewals.—Certificates of registration for professional engineers and land surveyors shall expire on the last day of the month of December following their issuance or renewal and **shall become invalid** on that date unless renewed. The amount of the renewal fee shall be set by the board and shall not exceed ten dollars ($10). It shall be the duty of the secretary of the board to notify every person registered under this chapter of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed to

the registrant's last address recorded by the secretary of the board and shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of December by payment of a fee. The failure on the part of any registrant to renew his certificate annually in the month of December as required above shall not deprive such person of the right of renewal, but the fee to be paid shall be increased ten percent for each month or a fraction of a month that payment of renewal is delayed; provided, **however, that the maximum time for renewal shall not exceed ten months.** The board, in its discretion, may make an exception to the foregoing renewal provisions in the case of a person who is in the armed service of the United States." (Emphasis supplied.)

This office has held that the right to renew a certificate expires at the end of the tenth month following the December in which the renewal could have first been effected. The Legislature, by providing this ten-month period of grace, expressly established the period in which renewal could be effected, and the Board is without authority, and the registrant is without the right to effect a renewal after the expiration of the ten-month period.

If one allows his certificate to expire absolutely, the same becomes invalid for all intents and purposes. He is in the status of one who has never registered. And therefore, in order to be entitled to reregistration he must make an original application and meet the statutory requirements that are now in existence. Quarterly Report of Attorney General, Volume 50, page 115.

Very truly yours,

MacDONALD GALLION
Attorney General

January 15, 1968

Honorable Cranford H. Burns
Superintendent
Mobile County Schools
Mobile, Alabama

Schools—Criminal Law—Warrants.

1. A child between the ages of seven and sixteen years is required by law to attend a public school, or private school, or denominational school, or parochial school, or be instructed by a private tutor. Section 297, Title 52, as Amended, Code of Alabama 1940, Recompiled 1958.

2. Section 311, Title 52, Code of Alabama 1940, Recompiled 1958, places the duty to bring criminal proceedings for violations of Section 297, above, on the school attendance officer.

Opinion by Assistant Attorney General Madison.

Dear Dr. Burns:

Your request for an official opinion, dated January 3, 1968, presents the following two questions:

"1. Do we have a compulsory attendance law? If so, is this law valid and should it be enforced?

"2. Should warrants be signed by Attendance Workers or should warrants be signed by agents of the Juvenile Court?"

On October 21, 1963, this office wrote Mr. Dwain M. Estes, Associate Professor, University of Alabama, as follows:

"I have your letter of October 18, 1963, which is as follows:
" 'I have been trying to figure out whether Alabama has a compulsory school attendance law. Part of the confusion comes from the quotation which appeared in the newspaper regarding Chief Justice Ed Livingston's ruling on the case in Mobile concerning a high school girl who refused to attend physical education classes because of religious beliefs. In this newspaper clipping Chief Justice Livingston is quoted as saying, "The state has no constitutional obligation to provide for schools. Neither does it require attendance in public schools."
" 'At your convenience would it be possible for you to clarify this matter for me in order that I can properly interpret the law to my students.'

"In **Mitchell v. McCall,** 143 So. 2d 629, Judge Livingston stated:
" 'However, appellant's daughter is free to refrain from attending the public schools since Alabama does not require public school attendance. Act No. 367, Reg. Sess. 1957, p. 482, amending Act No. 201 of the Acts of Alabama, Reg. Sess. 1955, and which became law on Aug. 26, 1957, pursuant to Sec. 125 of the Constitution. Her attendance in a public school is therefore voluntary. See also Act No. 117, Special Session of the Legislature 1956, p. 446.'

"In the above opinion, three other judges concurred in the result only.

"Act No. 117, supra, provides in pertinent part:

" 'Every child between the ages of seven and sixteen years shall be required to attend a public school, private school, denominational school, parochial school or be instructed by a competent private tutor, for the entire length of the school term in every scholastic year.'

"It would seem therefore that what Judge Livingston had in mind was that attendance at one of the type schools mentioned above or instruction by a private tutor was required, but this

would not necessarily mean a public school. The constitutional provision which required a system of public schools has been repealed.

"It is hoped that the above may be of some help."

Then, on September 13, 1965, this office in a letter to Honorable Osbie J. Linville, Juvenile Probation Officer, Lauderdale County Juvenile Court, Florence, Alabama, said:

"Children between the ages of seven and sixteen are required to attend a public school, private school, denominational school [parochial school inadvertently omitted from quoted letter], or be instructed by a competent private tutor. Section 297, Title 52, Code of Alabama 1940, Recompiled 1958.

"Alabama does not require public school attendance. Attendance in a public school is therefore voluntary. **Mitchell v. McCall,** 273 Ala. 604, 143 So. 2d 629."

In **Ogle v. Ogle,** 275 Ala. 483, 156 So. 2d 345, the Supreme Court of Alabama, after quoting said Section 297, said:

"The object of the **compulsory education law** is that all children shall be educated at least to the extent thereby prescribed . . . . " [Emphasis supplied.]

So, the specific answer to the first part of Question No. 1 is that Alabama does have a compulsory attendance law in that a child of required age must attend either a **public school,** or **private school,** or **denominational school,** or **parochial school,** or **be instructed by a competent private tutor.**

It cannot be said that you can single out and require a child to attend a public school, or private school, or denominational school, or parochial school, or be instructed by a competent private tutor, but he can be required, however, to attend one or the other of said schools or be instructed by a private tutor. If the child does not comply with the requirements of said Section 297, the attendance officer appointed pursuant to Section 314, Title 52, Code of Alabama 1940, Recompiled 1958, can ascertain this fact and also if any valid reason or good excuse exists for his failure.

In response to Question No. 2, it is my opinion that the duty to bring criminal prosecution against the parent, guardian, or other person having control of the child who is in violation of Section 297, supra, is by statute placed upon the attendance officer, Section 311, Title 52, Code of Alabama 1940, Recompiled 1958.

This is not to say, however, that others who have probable cause may not swear out warrants for violations of said Section 297.

Finally, it is noted that this office does not pass upon the validity

of statutes, but they are presumed valid until the courts decide otherwise.

Yours very truly,

MacDONALD GALLION
Attorney General

January 15, 1968

Hon. Robert H. Kirksey
Judge of Probate
Pickens County
Carrollton, Alabama

Probate Judge—Funds Burglarized.

1. If a Judge of Probate has observed the highest care and diligence in safeguarding money which he has collected for the State and County, and has not defaulted as to the time in which he is required to transmit the same to the State and County, and his office is burglarized, he and his sureties are not liable for the loss of the same.

2. A check presented in payment of the tax is a conditional payment and such payment does not become absolute until the check has cleared the bank upon which it is drawn.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion bearing date of December 7, 1967, is as follows:

"May I respectfully request your opinion on the following questions which arise out of the facts set forth below:

"On the night of November 15, 1967, burglars broke into and entered the Probate Judge's office of Pickens County. They drilled the safe, broke off the combination lock and took from the safe and carried away $556.48 in cash and $13,654.25 in checks, which had been given in payment for motor vehicle license plates and various licenses issued by this office on November 14, 1967, and November 15, 1967.

"The stolen cash and checks were stored in a safe and vault furnished by Pickens County for safekeeping of funds. The vault doors were locked to the fullest extent possible. The safe door was closed and the combination locked at the close of business on November 15, with all of the funds and checks on hand being stored inside the safe. My office thus had used every facility made available for safe-keeping by the County. "On Wednesday, November 15, 1967, the Depository for my of-

fice, which is First State Bank of Carrollton, was closed for a local banking holiday. Despite the holiday, a bank official obliged my office at about 4:00 p.m. by opening the bank to receive a deposit of cash in the amount of $3,503.12. The First State Bank of Carrollton does not have a night depository facility.

"Under these circumstances I believe I can say without hesitation that my office exercised the highest degree of care, diligence and vigilance to prevent the loss. The office was robbed by an irresistible force.

"An immediate investigation was made on the morning of November 16, by the Sheriff of Pickens County, a State Criminal Investigator, an F. B. I. agent and a Post Office Inspector, who volunteered his assistance. They were of the unanimous opinion that the burglary had been performed by professional safecrackers.

"On November 16, I advised every bank in Pickens County of the burglary and mailed a written advice (as well as telephoned) to the Alabama Bankers Association. Whereupon the Bankers Association issued a bulletin to all its member banks. Also, on the morning of November 16, the District Supervisor for the Examiner of Public Accounts for the State of Alabama was notified and he visited the building. On the afternoon of November 16, I personally talked by telephone with Assistant Attorney General William N. McQueen. He advised me to write all persons known to us to have issued the stolen checks, advising them to issue a Stop Payment Order on the stolen checks and to request that they re-issue their respective checks to my office. The writing of such letters was begun immediately and was accomplished within several days following the burglary.

"The money taken from the safe by the burglars was the same money my office had collected. Except for the alertness and diligence of my office staff by making the late afternoon cash bank deposit on November 15, the loss would have been much greater.

No evidence has been obtained as to the identity of the offenders or the whereabouts of the cash or stolen checks. Although a thorough fingerprint examination of the premises was made, the investigators could find only what they described as 'glove prints.'

"Based on the above facts, would you be so kind as to give me your official opinion on the following questions:

"(1) Am I, as Judge of Probate, personally liable to the State of Alabama for the loss?

"(2) Presuming that one or more parties, who had received

automobile license plates and/or other licenses from my office in return for checks which were stolen, should refuse to reissue their checks or to make payment otherwise, what action can and should be taken to recover the vehicle license plates and other licenses so issued, or to secure payment therefor, and what official or agency should initiate and carry out such recovery or payment?"

My answer to your first inquiry is in the negative.

This office in an opinion to Hon. Kenneth Griffith, Judge of Probate of Cullman County, under date of January 30, 1950, Quarterly Report of Attorney General, Volume 59, page 132, considered an identical situation as that presented by you. This opinion held that if it appears from the fact the judge of probate has observed the highest care, vigilance and diligence in safeguarding money which he has collected as state and county taxes, has not defaulted as to the time in which he is required to transmit the same to the State and County, and his office is burglarized, and the money so collected by him, the property of the State and County, is taken from his safe, he and his sureties are not liable for the loss of the same.

It appears from the facts presented by you that you exercised the highest degree of care and diligence in safeguarding the money which you had collected for motor vehicle license plates and various licenses issued by your office on November 14, 1967, and November 15, 1967.

It further appears from your request that the First National Bank of Carrollton, the County Depository, was closed on November 15, 1967, observing a bank holiday, and you could not make a deposit as usual on that date.

You are, therefore, advised that the opinion heretofore referred to, is controlling in your situation, and neither you nor the sureties on your bond are liable to the State of Alabama or Pickens County for the loss of these funds.

In answer to your second question, you are advised that if a person who has given a check and received automobile license plates, or any other license from your office, and his check was among one of the ones stolen from your office, should refuse to reissue his check or otherwise make payment for the licenses received by him, then in that event, the sheriff of your county or a duly authorized official would have authority to repossess said licenses and cite such person for either operating an automobile without a license or carrying on a business without a license.

A check is not payment for licenses or other taxes due, but is merely a conditional payment, and the payment does not become absolute

until the check has cleared the bank upon which it is drawn. Quarterly Report of Attorney General, Vol. 34, page 58.

Yours very truly,

MacDONALD GALLION
Attorney General

January 17, 1968

Honorable Cliff Evans
Commissioner of Public Works
City of Montgomery
Montgomery, Alabama 36104

Bids—Contracts.

1. Specifications written into a request for bid must be sufficiently certain and definite to secure a fair basis for competitive bidding, and should contain nothing that would otherwise prevent or restrict full and free competition.
2. Specifications which stifle competition are objectionable, but it is no objection to the specifications that the material required can be furnished by one party provided it is readily obtainable in the open market.
3. Specifications should be reasonably related to the work to be performed or purpose for which the material to be purchased is used.

Opinion by Assistant Attorney General Webb.

Dear Mr. Evans:

I have your letter of January 4, 1968 requesting an opinion of this office as follows:

> "After reviewing the competitive bid law for municipalities, I find that it is basically the same as applies to the State; therefore, am I correct in assuming that the municipality in the name of the City of Montgomery has the same privilege of writing specifications per the attached, namely, that we have the authority to specify brand names along with specifications for the material or equipment desired?
>
> "With reference to State Requisition DPS 612, item 15, the State has specified a particular type light and states that **'No substitutes will be acceptable.'** Does this apply also to municipalities and to equipment specified?
>
> "I appreciate very much your cooperation in returning your ruling on this as early as possible."

Attached to your letter were specifications taken from actual state requisitioning. The requisition form from which they were taken is a

general form used by the Division of Purchases & Stores of the Department of Finance requesting sealed bids on the items listed and contains at the bottom of the page the following words:

> "Brand names, catalog numbers, etc., are used to indicate levels of quality."

Competitive bid requirements for municipal purchases are contained in Act No. 217, Special Session 1967. Competitive bid requirements for state purchases are contained in Chapter 21 of Title 55, Code of Alabama 1940, Recompiled 1958 (1965 Cumulative Pocket Part). The requirements for purchase are similar.

In checking the individual items requested, I note, for example, Requisition Pd 8-01-27, used by you as an example, requested sealed bids on a 1968 Ford Ranch Wagon, 8-Cylinder, containing certain specified equipment. I also note by the records of the Finance Department that the actual low bid was submitted by a Plymouth dealer and that a Plymouth station wagon was purchased on this requisition. The same thing was true of other items using brand names. You also made note in your letter of State Requisition DPS 612, Item 15, requesting sealed bids on 15 Dietz #2118, Revolving Dome Lights—12 Volt, with certain specifications containing, further, the words "No substitutes will be acceptable." In checking this particular item, I find that the Department of Public Safety already had on hand certain parts which could be used only in this particular type of dome light and, further, that the dome light was subject to competitive bid on the open market (records indicate six bids were received) even though it was a brand name.

To answer your specific questions, I would necessarily have to have more information about the particular request for purchase and the material desired. As you can see, the state does not generally use brand names or restrictive specifications for material or equipment except to indicate level of quality desired, unless there is a particular necessity therefor, such as the need for the material to be joined together with or used in conjunction with material of the same particular brand name already in possession of the requisitioning authority.

For your information and guidance, I would quote with approval the following two general statements of law found in American Jurisprudence and Corpus Juris Secundum on this particular subject:

> "The scope of the terms and conditions that may be included are determined by the power and authority of the political unit for which the work is to be done. They must, however, be sufficiently certain and definite to secure a fair basis for competitive bidding, and should contain nothing that would otherwise prevent or restrict full and free competition . . . . " 48 Am. Jur. 776 (Public Works Contracts, Section 35).
>
> ". . . Specifications which stifle competition are objectionable, but it is no objection to the specifications that the material

required can be furnished by one party, provided it is readily obtainable in the open market. Specifications must contain no unreasonable requirements. . . . " 20 Corpus Juris Secundum, page 1022 (Counties, Section 185).

In general, it is the opinion of this office that restrictive specifications and brand names should be reasonably related to the work or job to be performed and quality or purpose of the product to be obtained and may not be used to prevent or restrict full and free competition on the open market.

Yours very truly,

MacDONALD GALLION
Attorney General

January 23, 1968

Honorable Estes R. Flynt
Chairman
Court of County Commissioners
Lauderdale County
Florence, Alabama

Bids—Counties—Hospitals—Mental Health—Municipalities—Words and Phrases.

1. A community mental health center is a hospital.
2. Purchases of personal property for the Muscle Shoals Mental Health Center are not required to be made on a competitive bid basis.

Opinion by Assistant Attorney General Gish.

Dear Mr. Flynt:

Your request for an official opinion dated January 2, 1968, is as follows:

"The City of Florence and the County of Lauderdale own and operate ELIZA COFFEE MEMORIAL HOSPITAL under the provisions of Title 22, Section 189, Code of Alabama, Recompiled 1958.

"This hospital is operated continuously and exclusively through the Board of Governors selected jointly by the City and County. It is physically located in the City of Florence and is situated on a relatively large site consisting of several acres. The fee simple title to this property is jointly owned by the City of Florence and Lauderdale County.

"The City of Florence and the County of Lauderdale are currently advertising for bids for the construction of a comprehensive community mental health center which will be located on the Eliza Coffee Memorial Hospital grounds and which is planned and designed to be an integral part of the City-County

Hospital complex. A copy of the Advertisement For Bids currently being published is enclosed.

"This new project is being constructed under and pursuant to the provisions of the Community Mental Health Centers Act (Public Law 88-164) and is being financed by a combination of local, state, and federal funds. The total cost is estimated to be $1,800,000.00.

"This new facility will be known as The Muscle Shoals Mental Health Center and will consist of an in-patient wing of about thirty-eight beds, an out-patient clinic, a day care area, certain vocational rehabilitation facilities, an alcoholism clinic, recreational facilities and an auditorium-gymnasium. All of these described new facilities are a carefully planned part of a comprehensive program for the treatment of mental illness. The existing City-County hospital will utilize many of the new programs and facilities of the mental health center, while the center itself will avail itself of numerous services and facilities presently available at the hospital for the care and treatment of sick and wounded persons.

"The full legal title to this entire hospital complex, including the mental health center, will be continuously owned by the City of Florence and Lauderdale County and will be under the continuous jurisdiction of the Board of Governors heretofore described. However, the entire out-patient department of the mental health center will be day by day operated by the Muscle Shoals Mental Health Center, a public corporation formed under Act No. 310, Acts of Alabama, Regular Session 1967, by agreement with the Board of Governors.

"Included in the total estimated cost of this project is a large amount of equipment necessary for the functioning of the facility. Attached hereto and made a part hereof is a detailed description of the three groups of equipment which are specified in the regulations governing the Hill-Burton program and which will be necessary for the functioning of this mental health center.

"The Group I equipment above referred to is included in the general construction contract to be bid on January 25, 1968. The Group II and Group III equipment for this new project will be purchased under separate contract. The question has arisen whether the State of Alabama Competitive Bid Law necessitates taking bids on this Group II and Group III equipment pursuant to the procedures prescribed by Act No. 217, Acts of Alabama, 1967 Special Session, as amended.

"The term 'community mental health center' is defined in Section 401 of the Community Mental Health Centers Act (Public Law 88-164) as follows:

" 'The term "community mental health center" means a facility providing services for the prevention or diagnoses of mental illness, or care and treatment of mentally ill patients, or rehabilitation of such persons, which services are provided principally for persons residing in a particular community or communities in or near which the facility is situated.'

"We herewith propound to your office the following legal questions:

"(1.) Is a 'community mental health center' as defined in the above cited federal statute to be classified in its entirety as a 'hospital' and thus exempt from the competitive bid requirements of Act No. 217, as amended?

"(2.) Is the proposed Muscle Shoals Mental Health Center under the particular circumstances herein described to be classified in its entirety as a 'hospital' and thus exempt from the competitive bid requirements of Act No. 217, as amended?

"(3.) Can the City of Florence and the County of Lauderdale legally purchase the Group II and Group III equipment herein described for the new Muscle Shoals Mental Health Center without the necessity of taking bids pursuant to the procedures prescribed by Act No. 217, as amended?"

Act No. 217, Acts of Alabama 1967, approved May 10, 1967, provides that all expenditures of public funds made by municipalities, counties, and the instrumentalities thereof in the amount of $500.00 or more for the purchase of personal property must be made by contract entered into on a competitive bid basis.

Section 2 of Act No. 217, supra, as amended by Act No. 769, Acts of Alabama 1967, approved September 9, 1967, provides that competitive bids shall not be required for purchases for public hospitals or nursing homes operated by the governing boards of the instrumentalities of the State, counties and municipalities.

The Supreme Court of Alabama in the case of **Noble v. First National Bank of Anniston,** 241 Ala. 85, 1 So. 2d 289, defined a hospital as "an institution for the reception, care and medical treatment of the sick and wounded." Therefore, I am of the opinion that under the facts stated in your request the Muscle Shoals Mental Health Center is a hospital within the meaning of Act No. 217, as amended, supra. See Quarterly Reports of Attorney General, Volume 78, page 31, and Volume 117, page 29.

For the reasons stated herein, I am of the opinion that purchases of personal property for the Muscle Shoals Mental Health Center are exempt from the competitive bidding requirements of Act No. 217, supra.

Therefore, each of your three questions is answered in the affirmative.

Very truly yours,

MacDONALD GALLION
Attorney General

January 25, 1968

Honorable Fred G. Collins
City Attorney
City of Mobile
Mobile, Alabama

Intoxicating Liquors—Municipalities—A. B. C. Board.

1. A municipality does not have the authority to pass and enforce an ordinance regulating the hours of opening, closing and serving of alcoholic beverages by licensees of the Alabama Alcoholic Beverage Control Board.

2. Alcoholic beverages may not be sold on Sunday by establishments holding private club licenses if in truth and in fact it is not a private club as that term is used in Rule 24 of the A. B. C. Board.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of December 6, 1967, is as follows:

> "I am writing you regarding questions which have arisen regarding municipal ordinances which seek to regulate establishments selling intoxicating beverages. They are as follows:
>
> "1. Does a municipality have the power to pass and enforce ordinances regulating the hours of opening, closing, and serving of alcoholic beverages by licensees of the Alabama Alcoholic Beverage Control Board notwithstanding the provisions of the Code of Alabama, Title 29, Section 6, and other applicable sections?
>
> "2. Does a municipality or other local government body have the power to pass and enforce ordinances regulating the hours of opening, closing, and serving of alcoholic beverages by those licensees of the ABC Board holding 'Private Club' licensees?
>
> "3. Under the following municipal ordinance,
>
> "It shall be unlawful for any person to violate within the city or within the police jurisdiction thereof any law of the state, now or hereafter enacted, the violation of which is a misdemeanor under state law.

"May a municipality enforce the provisions of the Code of Alabama, Title 29, Section 36(1) against an establishment holding a 'private club' license issued by the ABC Board upon evidence that the licensee is not, in fact, operating as a bona fide private club?"

My answer to your first two questions is in the negative.

Title 29, Section 2(b), Code of Alabama 1940, reads as follows:

"(b) Except as herein otherwise expressly provided, the purpose of this chapter is to prohibit transactions in liquor and alcohol, and malt or brewed beverages, which take place wholly within the state, except by and under the control of the board, as herein specifically provided, and every section and provision of this chapter shall be construed accordingly. The provisions of this chapter, through the instrumentality of the board, and otherwise, provide the means by which such control shall be made effective. This chapter shall not be construed as forbidding, affecting or regulating any transaction which is not subject to the legislative authority of this state."

It plainly appears from Section 2(b) of Title 29, supra, that the Legislature in no uncertain terms placed, except as otherwise expressly provided, transactions in liquor, and alcohol, malt or brewed beverages exclusively under the control of the A. B. C. Board.

I find no provision in Title 29 or any other law of the State whereby a municipality is granted the authority to regulate the hours of opening, closing and serving of alcoholic beverages by licensees, whether it be a regular licensee or an establishment holding a private club license. In both instances, the sole control of such person is placed under the supervision of the board by the above-quoted Section 2 of Title 29, Code of Alabama 1940.

Section 6 of Title 29, Code of Alabama 1940, the section referred to by you in your request, was, of course, placed in the law so as to enable the board to carry out the authority granted to it under Subsection (b) of Section 2, supra.

For your information, there was a rule of the A. B. C. Board at one time regulating the opening and closing and serving of alcoholic beverages by licensees, but this rule was repealed some years ago.

My answer to your third question is in the affirmative.

Title 29, Section 36(1), Code of Alabama 1940, provides as follows:

"§ 36(1). Same; Sunday.—Any person who gives away, sells, serves, or drinks any alcoholic or malt or brewed beverage in any cafe, lunchroom, restaurant, hotel dining room, or other public place on Sunday is guilty of a misdemeanor, and upon conviction shall be fined not less than ten nor more than one hundred dollars and may also be imprisoned in the county jail,

or sentenced to hard labor for the county for not more than three months.

"The proprietor, keeper, or operator of any cafe, lunchroom, restaurant, hotel dining room, or other public place who knowingly permits any person to give away, sell, serve, or drink any alcoholic or malt or brewed beverage on the premises of such cafe, lunchroom, restaurant, hotel dining room, or other public place on Sunday is guilty of a misdemeanor and upon conviction shall be fined not less than ten nor more than one hundred dollars, and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than three months."

A municipality may, in my opinion, under the Ordinance quoted by you in your letter, enforce the provisions of Section 36(1), supra, if it can prove on a proper hearing that an establishment which holds a "private club license" is in truth and in fact not a private club as defined in Rule 24, Rules of the Alabama Alcoholic Beverage Control Board, promulgated on the 19th of February, 1964. It will be noted that under the provisions of said Section 36(1), supra, alcoholic beverages may not be served or sold on Sunday in any restaurant, hotel dining room **or other public place.**

An establishment who holds a so-called "private club license" that admits the general public to the establishment and does not limit its admittance to its members or their guests would in all probability constitute a public place as that term is used in Section 36(1), supra, and could be proceeded against under the Ordinance quoted in your request.

Yours very truly,

MacDONALD GALLION
Attorney General

January 31, 1968

Honorable Hoyt B. Hamilton
Chairman and Judge of Probate
Court of County Commissioners
St. Clair County
Ashville, Alabama 35953

Sheriffs—Counties—Attorneys—Cost and Fees.

The County may properly pay attorneys' fees for defending a county official in a lawsuit when the county official is acting in his official capacity and such act does not involve a wilful or wanton personal tort or a criminal offense.

Opinion by Assistant Attorney General Tyson.

Dear Sir:

Your recent request to our office asks our opinion on the following matter:

> "Under Title 13, Section 229, under cited cases 'county commissioners court may employ counsel'—
>
> "In St. Clair County the Sheriff, who is on a salary paid by the commissioners court, in his official capacity as sheriff in serving warrants, was sued **personally** in Federal Court by a person who was arrested by the sheriff in line with his regular duties of keeping the peace and maintaining law and order.
>
> "St. Clair County Commissioners Court has been billed with a $750.00 legal services claim in this case for defending the sheriff while in the performance of his duties as sheriff.
>
> "Does the Commissioners Court have the authority to pay this claim?"

Your attention is called to Act No. 92, 1967 Regular Session of the Alabama Legislature, which expressly authorizes payment of attorney's fees and other costs for defending lawsuits brought against county officials when the county official is acting in his official capacity and such act does not involve a wilful or wanton personal tort or a criminal offense.

This office is of the opinion that the St. Clair County Commissioners Court may properly pay the attorneys' fees for legal services for defending the sheriff while in the performance of his duties as sheriff, provided, that the County Commissioners Court can determine that no wilful or wanton personal tort was involved or a criminal offense committed by the official, as provided for in Act No. 92, 1967 Regular Session of the Alabama Legislature.

I trust this answers your inquiry.

Yours very truly,

MacDONALD GALLION
Attorney General

January 31, 1968

Honorable David L. Thomas
District Attorney
Twenty-third Judicial Circuit
Madison County Court House
Huntsville, Alabama 35801

Gaming—Innkeepers.

Title 14, Section 263, Code of Alabama 1940, authorizes arrest of those persons seen gambling in a hotel (mo-

tel) room when uninvited persons may indiscriminately come without any restraint.

Opinion by Assistant Attorney General Lockett.

Dear Sir:

Your request for an official opinion of this office dated January 15, 1968, is as follows:

> "Your official opinion is respectfully requested regarding Title 14, Section 263, Code of Alabama 1958.
>
> "(1) Does a hotel (motel) room, opening to the outside of a building, and being rented by an individual qualify as a public place under the provisions of the referenced title?
>
> "(2) If law enforcement officers can see into and/or hear conversations from a hotel (motel) room described in (1) above and they observe card game(s) in process and/or hear conversations which are associated with gaming (cards/dice) activities, would this establish sufficient probable cause for a warrant of arrest under the provisions of referenced title?
>
> "(3) Under what circumstance(s) may hotel or motel rooms be considered a public place?"

In answer to your first question, a hotel or motel room is prima facie a private place, but it may be made public within the meaning of the statute. If the persons present are all there by invitation for the purpose of playing cards or participating in social amusements, such room does not constitute "a public place." **Coleman vs. State,** 20 Ala. 51 (1852). However, if persons uninvited may indiscriminately come without any restraint, said room may become "a public place." **Thrasher vs. State,** 168 Ala. 130, 53 So. 256 (1910).

In answer to your second question, Title 15, Section 154, Code of Alabama 1940, states in part:

> "An officer may also arrest any person, without warrant, on any day and at any time, for any public offense committed, or a breach of the peace threatened in his presence; . . . ."

The committing of an offense in the presence of an officer gives him the authority to make an arrest. Therefore, it must follow that the circumstance authorizing the arrest would also authorize the issuance of a warrant of arrest.

In answer to your third question, the acquired character of a particular room would be determined by the status of those persons present. If persons uninvited may indiscriminately come without any

restraint said room may become "a public place." **Thrasher vs. State,** supra.

I trust this answers your inquiry.

Yours very truly,

MacDONALD GALLION
Attorney General

February 5, 1968

Honorable Fred G. Collins
City Attorney
City of Mobile
Post Office Box 4492
Mobile, Alabama 36604

Bids—Contracts—Municipalities.

1. A municipality may award a contract for the purchase or lease of personal property to a resident responsible bidder whose bid is no more than 3% greater than the bid of the lowest responsible bidder.

2. A municipality must award a contract for labor, services or work to the lowest responsible bidder.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated January 23, 1968, is as follows:

"The Board of Commissioners of the City of Mobile have instructed me to request your official opinion on the following matter.

"The City Commissioners authorized a paving venture under Article 1, Chapter 11, Title 37, Code of Alabama, Recompiled 1958. Following the necessary hearings and advertisements, bids were received for furnishing labor and materials for the construction of the said improvements. The bids exceed $500.00 and are all in proper form. The lowest bid was by a contractor not located within the municipal limits, and the second lowest bid was from a contractor whose place of business is within the municipal limits, and the difference between the lowest and second lowest bid was less than one-half of one per cent.

Both bidders are deemed to be responsible bidders.

"Title 37, Section 521, Code, supra, states that municipal authorities must let the contract to the lowest responsible bidder.

"The City of Mobile's present form of government is the 'optional form of commission government', Title 37, Sections 89 through 119, Code, supra; and Section 98 contains the following language:

"' . . . All contracts for the construction or improvement or reconstruction, or reimprovement, of any street, alley, highway, or other public places or of any sidewalk thereon by filling, grading, leveling, graveling, slagging, macadamizing, curbing, guttering, paving or otherwise improving, and all contracts to construct or reconstruct any drain or drains, sanitary or storm water sewer or sewers, sanitary and storm water sewers either combined or separate, must be let by competitive bidding to the lowest responsible bidder. A responsible bidder is defined as one who is ready, able and willing to execute a bond reasonable in amount with surety to perform the contract according to specifications.'

"The Municipal Bid Law, Act No. 217, 1967 Legislature, purports to govern all expenditures of funds for labor, services or work or the purchase of materials involving $500.00 or more, and in Section 1 thereof provides that a municipality may award a contract to a bidder having a place of business within the municipality if such bid is no more than three per cent greater than the bid of the lowest responsible bidder. Section 12 of said statute states that the Act is cummulative but all conflicting provisions of law are expressly repealed.

"In the light of the foregoing, your official opinion is requested on the following questions:

"1. Do the provisions of Section 1 of Act No. 217, the Municipal Bid Law allow a municipality to award a contract for furnishing labor and materials for the construction of a public street within the municipality, the cost, or a portion of the cost, of which is to be assessed against abutting property owners, to the second lowest responsible bidder if such bidder has a place of business within the municipality and his bid is no more than three per cent greater than the bid of the lowest responsible bidder, if such lowest responsible bidder does not have a place of business within the municipality?

"2. Does said Act No. 217 repeal that portion of Title 37, Section 98, Code of Alabama, Recompiled 1958, governing the awarding of contracts and set forth above?

"3. Does said Act No. 217 repeal that part of Title 37, Section 521, Code, supra, stating that the municipal authority must let the contract to the lowest responsible bidder?

"4. Does the proviso in Section 1 of said Act No. 217 apply only to the purchase of personal property and not to a contract under which the bidder furnishes labor and materials for the construction of a public work project?"

Section 1 of Act No. 217, Acts of Alabama 1967, approved May 10, 1967, provides that all expenditures of public funds made by municipalities in the amount of $500.00 or more for labor, services or work or for the purchase or lease of personal property must be made by contract entered into on a competitive bid basis. Said Section further provides as follows:

> ". . . that in the event a bid is received for **an item of personal property** to be purchased or contracted for from a person, firm or corporation, deemed to be a responsible bidder, having a place of business within the county, where the awarding authority is the county or an instrumentality thereof, or within the municipality, where the municipality or an instrumentality thereof is the awarding authority, which such bid is no more than 3% greater than the bid of the lowest responsible bidder, the awarding authority may award the contract to such resident responsible bidder. . . . " (Emphasis supplied.)

Since the above-quoted proviso of Section 1, supra, is specifically limited to contracts involving the purchase or lease of personal property, I am of the opinion that said proviso does not apply to contracts for labor, services or work.

Therefore, you are advised that under the facts stated in your request the construction contract must be awarded to the lowest responsible bidder.

Act No. 217, supra, is the latest expression of the Legislature concerning the general field of requiring bids in the awarding of municipal contracts. As such, the provisions of said Act which may be in conflict with the provisions of former General, Special or Local Acts supersede such provisions of such former General, Special or Local Acts. See Quarterly Report of Attorney General, Volume 128, page 15. However, since I have concluded that the provisions of Act No. 217, supra, are not in conflict with Title 37, Section 98, Code of Alabama 1940 or Title 37, Section 521, Code of Alabama 1940, as amended by Act No. 883, Acts of Alabama, Regular Session 1965, page 1662, said statutes are not repealed or amended by Act No. 217, supra.

Premises Considered, your first, second and third questions are answered in the negative, and your fourth question is answered in the affirmative.

Very truly yours,

MacDONALD GALLION
Attorney General

February 9, 1968

Honorable Ira H. Weissinger
Chairman
Lee County Commissioners Court
Opelika, Alabama

Counties—Jails—Sheriffs.

1. When the county jail is insecure or insufficient and there is reason to apprehend an escape, the sheriff has authority to summon as many guards as necessary to prevent an escape. Title 45, Section 131, Code of Alabama 1940.

2. Guards summoned pursuant to Title 45, Section 131, supra, may be paid by the county governing body in such amount as deemed by it as reasonable and necessary under the circumstances.

Opinion by Assistant Attorney General Webb.

Dear Judge Weissinger:

Your request for an official opinion dated February 1, 1968 is as follows:

> "Section 131 of Title 45, Code of Alabama, states that when the County Jail is insecure or insufficient, and there is reason to apprehend an escape, the Sheriff has the authority, and it is his duty, to summon as many guards as may be necessary to prevent an escape.
>
> "Recently, the Sheriff of Lee County, hired the services of a special guard to safeguard and supervise a prisoner indicted by the Grand Jury for the murder of three persons within this county. The Sheriff felt it necessary to hire a special guard during the time this prisoner was confined in the Lee County jail.
>
> "A claim has been filed against the General Funds of the county, by order of the Circuit Judge, citing the above-mentioned section of the Code, for payment of services of this special guard at the rate of $10.00 a day for thirty-one days.
> "Inasmuch as this prisoner was not an escapee, there are two questions I have regarding this claim:
>
> "1. Can the County pay for the services of a special guard in this instance?
>
> "2. Is the pay of $10.00 a day a proper claim for this service?"

Title 45, Section 131, Code of Alabama 1940, Recompiled 1958, reads as follows:

> "When the county jail is insecure or insufficient, and there is reason to apprehend an escape, the sheriff has authority and it is his duty, to summon as many guards as may be necessary to prevent an escape."

This section has been interpreted by the Supreme Court of Alabama and by this office as being a legitimate item of charge against the county governing body. See **Montgomery County v. Barber, Sheriff,** 45 Ala. 237; and Quarterly Report of Attorney General, Volume 3, page 220 (Biennial Report of Attorney General 1934-36, page 715).

As stated by this office in a similar type question when citing the **Barber** case, supra:

> "It is clear that under these sections the sheriff not only has the authority but it is his duty to summon such guards as might be necessary to insure the safekeeping of the prisoner. These guards are not public officials, so that the rule of law that a person taking public office is presumed to accept the same with all the burdens thereof, even to acting without pay, does not apply . . ."
>
> Biennial Report of Attorney General, 1936-38, page 553 (555).

When considered in the light of other sections of the Code, this rule is reasonable. After all, though the sheriff has charge of the jail, he does not construct, reconstruct, or repair the same, this being a duty of the county. Therefore, if the jail is insecure for the purposes of incarcerating a particularly dangerous prisoner, it is not the fault of the sheriff but, rather, the fault of the county, if any blame is to be attached. See, for example, Title 45, Section 185, Code of Alabama 1940, Recompiled 1958. I, therefore, answer your first question in the affirmative.

This office has previously ruled that the amount to be paid a guard under similar circumstances is a matter for the sound discretion of the county governing body under the circumstances of the situation. See Quarterly Report of Attorney General, Volume 24, page 244. In this particular instance, the amount claimed has been approved by the Circuit Judge. Though such approval is not necessary, it does, in this instance, lend credence to the circumstances and amount as being reasonable.

Very truly yours,

MacDONALD GALLION
Attorney General

February 15, 1968

Honorable L. M. Sims
Business Manager/Treasurer
Jefferson State Junior College
2601 Carson Road
Birmingham, Alabama 35215

Schools—Colleges and Universities—Funds.

1. Funds received by Jefferson State Junior College from student activity fees may not be used or expended for a "Student Personnel Coffee Fund."

2. Funds received from late examination fees or charges may not be used or expended to maintain a coffee and refreshment center in the faculty lounge.

Opinion by Assistant Attorney General Madison.

Dear Mr. Sims:

Your request for an official opinion dated February 7, 1968, is as follows:

"The question has arisen at our institution concerning the propriety and legality of expenditures in the two cases listed below:

"CASE I: The business manager received a requisition approved by the academic dean from our SGA faculty sponsor for $25 with which to pay for a 'Student Personnel coffee fund.' It was proposed that this money be spent from Student Government Association funds. The source of these funds is from a student activity fee which is charged on a voluntary basis. Upwards to 75% of the student body pay the activity fee. In discussing this expenditure with members of our academic staff, it was learned that the coffee fund would be administered through the student personnel office by the SGA and that such coffee and refreshments would be generally available to the students.

"CASE II. From the beginning of our institution a late exam fee has been charged. College management decided such fee would be collected by the business office but would be turned over to an appointed faculty committee to maintain a coffee and refreshment center in the faculty lounge. Only faculty members benefit from this expenditure. Since a late exam fee is indeed the same type of revenue as a late registration fee which we deposit to our general operating fund, the question has arisen as to whether these late exam fees may be used for "It is my contention that the above expenditures are not, at

the outset, a proper expenditure. As to their legality, I am the purposes stated in this case.

not qualified to say. Of course, if local college management concurred that such expenditures were not proper, that would end the matter. The question of legality then would not be a point.

"Dr. Brown, our president, has directed me to request an official ruling on the above two cases, however. It is his desire, as well as the desire of all on the staff at Jefferson State Junior College, to place our fiscal operations on a proper and legal basis that is beyond reproach. At the same time, we desire enough flexibility at the local level to be able to operate an institution of higher learning that will provide programs of the richest possible content for the youth of Alabama commensurate with the funds available to us.

"Your usual fine cooperation in assisting us toward that goal is appreciated. Your earliest convenient ruling on the above cases will be most helpful to us. Should you have any further questions, do not hesitate to write or call. We will furnish any additional information you may desire."

The Jefferson State Junior College is an agency of the State, as are also county and city boards of education.

In **City Board of Education of Athens v. Williams,** 231 Ala. 137, 163 So. 659, the Supreme Court of Alabama said:

"We also think that all contributions from individuals and public or private corporations (Section 258, Constitution), including cities, to the public school funds of the state, partake of the same nature as other moneys donated to public school purposes, after they have been placed under the power and control of the agencies created by law to administer them as such public school funds. They all then become of the same sort, regardless of their original source."

This office has ruled in an opinion to Honorable W. A. LeCroy, Superintendent, Chilton County Board of Education, dated May 12, 1961, that local school money could not be used to buy fountain pens for the members of the school faculty. There the money was raised by selling school pictures in the classrooms.

It has also been ruled by this office that a county board of education may not pay for a plaque or gift watch to be awarded a retiring teacher, nor for flowers for the funeral of a teacher or member of the teacher's immediate family, nor while the teacher is hospitalized. Letter to Honorable J. Noel Hand, Superintendent, Cleburne County Board of Education, dated March 14, 1967.

In an opinion to Honorable Howard L. Mosley, Administrator, Barbour County Hospital, Eufaula, Alabama, dated December 10, 1963, it

was ruled that the hospital authorities could not give bank notes to the employees at Christmas time for morale or any other purpose.

On November 8, 1967, in a formal opinion to Honorable Ralph P. Eagerton, Chief Examiner, dated November 8, 1967, this office ruled that a public agency or institution of the state may not expend appropriated public funds for holiday greeting cards, nor may auxiliary income from vending machine receipts, student activity receipts, etc., be so used.

While pointing out that such auxiliary income did not come within Title 55, Section 103, Code of Alabama 1940, it was specifically stated that Section 103, supra, definitely designates such institutional receipts or auxiliary income as public funds.

This same opinion pointed out that the several colleges, junior colleges, and trade schools involved in the request may only expend such funds for institutional purposes.

It is my opinion, therefore, that both the student activity fees and the late exam fees are public funds subject to the control of the college authorities for institutional purposes. These purposes in my opinion do not include either of the expenditures set forth in your two questions, supra.

The above results in a negative answer to both questions.

Yours very truly,

MacDONALD GALLION
Attorney General

February 19, 1968

Honorable Tennant M. Smallwood, Jr.
Assistant City Attorney
City of Birmingham
Department of Law
600 City Hall
Birmingham, Alabama 35203

Municipalities—Department of Public Safety—Bonds.

1. Deposit of a Driver License with arresting officer in lieu of bail bond as authorized by Act No. 220, General Acts of Alabama 1967, approved May 10, 1967, applies to violations of Title 36, Code of Alabama 1940, as amended, only, and not to municipal ordinances.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an opinion of this office bearing date of January 26, 1968, is as follows:

"It is my understanding that House Bill No. 78, a copy of which is attached, was enacted into law this past year. It would be appreciated if you would give me your opinion as to what effect this would have on municipal officers making charges for violation of municipal ordinances.

"We would especially be interested in knowing if a city policeman could use this in lieu of bond for traffic offenses against municipal ordinances, or whether this would apply only to charges made under Title 36 of the State Code."

Act No. 220, General Acts of Alabama 1967, approved May 10, 1967, provides in pertinent part as follows:

"Section 1. (a) Whenever any person lawfully possessed of a chauffer's or driver's license theretofore issued to him by the Department of Public Safety of the State of Alabama, or under the laws of any other State or Territory, or the District of Columbia of the United States shall be arrested and charged with any violation of the provisions of Title 36 of the 1940 Code of Alabama, as amended, for which under the provisions of Section 52 and 58(49) of the Code the arresting officer is directed to take a written bond, he shall have the option of depositing his chauffer's or driver's license so issued to him with the arresting officer of the Court, in lieu of any other security which may be required for his appearance in any court in this state in answer to such charge lodged in such court."

You will note that the above quoted section of Act No. 220, supra, refers specifically to violations of Title 36, Code of Alabama 1940, and as amended, and to no other provisions of law.

I am therefore of the opinion that Act No. 220, supra, applies only to violations of State law, i.e., Title 36, Code of Alabama 1940, as amended, and not to violations of City ordinances.

Very truly yours,

MacDONALD GALLION
Attorney General

February 23, 1968

Hon. David M. Cochrane
Judge of Probate
Tuscaloosa County
Tuscaloosa, Alabama

Gasoline Tax—Tuscaloosa County—Educational Institutions. Suppliers of motor fuels to educational institutions located in Tuscaloosa County are liable for the tax authorized to be levied by Act No. 416, Local Acts of Alabama 1935, Page 243.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of January 9, 1968, is as follows:

> "Re: Opinion Regarding Applicability of Tuscaloosa **County Gasoline Tax**
>
> "Tuscaloosa County has recently encountered a problem of applicability relating to our local Statutes permitting a 1c per gallon gasoline tax to be levied on gasoline sold here in Tuscaloosa County and respectfully send this letter requesting your opinion regarding same.
>
> "Act No. 416 of the 1935 Acts of Alabama permits or authorizes the Board of Revenue of Tuscaloosa County to levy a 1c per gallon tax on gasoline or other motor fuel.
>
> "Act No. 265 of the 1955 Acts of Alabama amends or modifies the former Statute by exempting the Tuscaloosa County Board of Education from the payment of said tax. For your convenience, photostatic copies of both aforementioned Acts are included.
>
> "Recently, the University of Alabama, the main campus of which is located in this county, have requested that they as an agency of the State, be exempted, or more properly that their suppliers of gasoline, be exempted from applicability of the tax. This, as a matter of practicality the county governing body was willing to do, however, only up to a certain point. Subsequent to that, other educational institutions, e.g., Stillman College, which is also located here and others have requested that they also be exempt from said tax.
>
> "Consequently, as Probate Judge and Ex Officio Custodian of Tuscaloosa County's funds, I respectfully request your opinion regarding the applicability of this tax to suppliers of motor fuels to our educational institutions located here, both those that are subdivisions of the State and those which are privately financed."

Act No. 416, Local Acts of Alabama 1935, Page 243, authorizes the Board of Revenue of Tuscaloosa County to levy and collect a privilege tax on all persons, corporations, co-partnerships, agencies, companies, associations and refiners selling, delivering, withdrawing from storage or keeping in storage for sale or delivery in Tuscaloosa County, gasoline, naptha, and other liquid motor fuels commonly used in internal combustion engines. It plainly appears from this act that the tax authorized to be levied is against the storage or withdrawal from storage for sale or delivery the gasoline products therein named. The tax authorized to be levied is against those persons selling gasoline products and in no manner does the act authorize the levy against institutions of higher learning in Tuscaloosa County.

You are, therefore, advised that those persons, firm or corporation, supplying gasoline to the University of Alabama and all other institutions of higher learning in Tuscaloosa County are liable for the tax imposed by Act No. 416, supra. As pointed out above, the tax is on the person, firm or corporation withdrawing from storage for sale such gasoline products, and is not levied against the institution of higher learning located within the confines of Tuscaloosa County.

Act No. 265, Acts of the Legislature 1955, Page 615, has the effect of relieving those persons who withdraw from storage for sale gasoline or gasoline products sold or delivered to the Tuscaloosa County Board of Education. This is the only exemption I find in either of the two acts hereinabove mentioned.

Yours very truly,

MacDONALD GALLION
Attorney General

February 23, 1968

Hon. J. Leon Tucker
City Clerk
City of Cullman
Cullman, Alabama 35055

Elections—Municipalities—Mayor.

In those elections in which the mayor is a candidate for re-election and cannot perform the duties prescribed by law, then the city clerk is such a disinterested party and may be appointed to perform the duties of mayor.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of February 6, 1968, is as follows:

> "This letter is in reference to the August 13th election for municipalities with a Mayor-Council form of government. According to the State Code, it is the responsibility of the mayor to have the poll list made, and the code states that if the mayor is running for re-election he must appoint a disinterested person to perform this task. I have received legal opinions stating that the council may appoint the city clerk to handle this function, but in discussing this with other city clerks within this area, I find that those who have experienced this same situation state that they have never actually prepared the poll list, that a person not connected with their office was appointed by the council to perform this job. However, they continue, in that the proper registration of voters

was performed in the city clerk's office but that the registration cards were delivered to the person responsible for preparing the poll list.

"I have it from one authority that if the council is satisfied of the clerk's disinterest that they may appoint him to prepare the poll list. My question is this: Since the council elects and appoints the city clerk, could the clerk be deemed a disinterested party?

"I will appreciate your prompt reply."

My answer to your inquiry is in the affirmative.

Section 16(a) of Act No. 663, Acts of the Legislature 1961, provides that the mayor or other chief executive officer of a city shall cause to be made a list of the qualified voters who reside within the corporate limits of such city and shall file such list with the municipal clerk on or before the second Tuesday in May preceding a primary municipal election and on or before the first Tuesday in July before a regular municipal election.

Section 17 of said act provides that in the event the mayor or chief executive officer of a city is a candidate in any municipal election, he shall be disqualified to perform the duties set forth in Section 16(a), supra, and said duties shall be performed by a disinterested person appointed by the governing body of the city.

The question now presents itself if you as Clerk of the City of Cullman are a "disinterested person" to perform these duties as that term is used in said act.

If the term "disinterested person" be given its literal meaning, then it would be impossible to appoint anyone to perform the duties of the mayor in the event he is a candidate in an election. This for the reason that every person in the city is supposed to be interested in one way or another in the outcome of the election. In my opinion, the term as used in Section 17, supra, means a candidate, other than the mayor in the election, the immediate family of the mayor, or some person who is personally or financially interested in the outcome of the election.

You state in your request that the Municipal Clerk of the City of Cullman is appointed by the governing body of the city. There are five members of the governing body of the City of Cullman in addition to the mayor and, in my opinion, it could not be said that you have any more interest in the outcome of the election of a mayor than any other citizen or elector of the City of Cullman. You do not hold your office by appointment of the mayor, but on the contrary you are appointed by the city council.

Premises considered, it is my opinion that you as City Clerk of the City of Cullman are a "disinterested person" as that term is used

in Section 17, supra, and may be appointed by the council to perform the duties of mayor in the forthcoming municipal election.

Yours very truly,

MacDONALD GALLION
Attorney General

February 26, 1968

Honorable David W. Pruett
Chairman, Board of Revenue
Colbert County
Tuscumbia, Alabama 35674

Closing and Vacating Streets and Highways—Counties—Highway Department.

1. County governing body proper authority to approve vacating street or alley not within limits of municipality.

2. Title 56, Code of Alabama 1940, Recompiled 1958, establishes proper procedure for abutting landowners to vacate street or alley.

3. Local act transferring duties of road construction and maintenance from county governing body to State Highway Department does not contravene statutes providing method to vacate street or alley outside of city limits. Act No. 645, 1965 Regular Session, pages 1164-1167, Vol. 2; Title 56, Section 32, Code of Alabama 1940, Recompiled 1958.

Opinion by Assistant Attorney General Lurie.

Dear Sir:

Your request for an official opinion under date of February 5, 1968 is as follows:

> "Act No. 654 of the 1965 Regular Session of the Legislature of Alabama (which said Act appears on page 1164-1167 in Vol. 2 of the 1965 Acts of Alabama, Regular Session) provides that the State Highway Department shall be responsible for the construction, maintenance and repair of the County roads and bridges in Colbert County and Section 2 of this Act limits the County governing body of Colbert County in regards to its powers and functions relative to the construction, maintenance and repair of said County roads and bridges.
>
> "Section 32 of Title 56 of the Code of Alabama provides that the governing body of any County must assent to the vaca-

tion of streets and alleys after being presented with a written instrument from the abutting landowners.

"My question is this—does the Board of Revenue of Colbert County, Alabama, have the authority to vacate streets and alleys under the provisions of Section 32 of Title 56 of the Code of Alabama, 1940, since said Act #645 of the 1965 Acts of the Legislature was passed."

The answer to your question is in the affirmative.

Act No. 645, 1965 Acts, Regular Session, page 1164, approved August 26, 1965, provides for the State Highway Department to take over and construct, maintain and repair the roads and bridges of Colbert County. This Act is patterned after the majority of such acts transferring the duty of building and maintaining roads and bridges in the county to the State Highway Department as has been done in several of the counties and it in no way relates to the provisions of Title 56, Section 32, Code of Alabama 1940, Recompiled 1958. Said Section 32 establishes the manner in which abutting landowners may vacate an alley or street.

Property owners desiring to accomplish such vacating within the city limits of a city or town, after recording the necessary written instruments as set out in the section, then are required to obtain the assent of the city council or other municipal governing body by adoption of appropriate resolution and the proper recording thereof. In the event the street or alley is being used as a public road and not within the limits of any municipality, the Board of Revenue or other county governing body must be presented with proper request and in like manner.

Any construction of the statutes which would render said Section 32 null and void would deprive the property owners of their rights granted in the section and such is definitely not undertaken nor attempted by the adoption of Act No. 645. The provisions of said Section 32 were in effect and operative prior to the passage of Act No. 645 and that act does no more than transfer the responsibility and duty to construct and maintain county roads as provided in Titles 12 and 23, Code of Alabama 1940, Recompiled 1958, from the county governing body to the State Highway Department.

Statutes are to be construed in pari materia and in such manner as to give a field of operation for the provisions of each. Our courts frown on repeal by implication and the title to Act No. 645 in no way suggests any change or alteration in the application of the provisions of said Section 32 which relates solely to the procedures to follow by property owners when they desire to vacate a street or alley.

Yours very truly,

MacDONALD GALLION
Attorney General

February 27, 1968

Honorable John R. Hargis
Superintendent
Autauga County Schools
Prattville, Alabama

Schools—County Board of Education—Legislature.

1. A member of the County Board of Education of Autauga County may represent a school tax district in which no school is located, having been elected from that district under Act No. 20, General Acts 1962, Page 26, and Act No. 194, General Acts 1959, Page 730.

2. The consolidation of school tax districts is provided for by Section 264, et seq., Title 52, Code of Alabama 1940, Recompiled 1958.

3. Changes in the method of election and number of County Board of Education members of Autauga County must be made by the Legislature.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion dated February 14, 1968, is as follows:

"We will appreciate your advising us on the following matters:

"1. Our county is now divided into five (5) school districts with a member of this Board being elected by the people of each of the respective districts. At the end of the present school year, the Federal Courts are forcing us to close three (3) of our schools that we are presently operating and when this is done it will leave one (1) district without a single school located anywhere within the district.

"Are there any legal complications to having a member of the Board represent the district without a school?

"2. Who has the authority to consolidate school districts?

"3. If it should be thought best to change our present five (5) districts and make only three (3) how would the number of the members of the Board be determined? In other words, if we had only three (3) districts and five (5) board members on what basis would the membership of the Board be decided? As it is presently constituted one of the districts now has 65% of all the students in the county."

Section 1 of Act No. 20, General Acts 1962, Page 26, provides: "A member of the board of education of Autauga County

shall be nominated and elected by the qualified electors of each of the several school districts of the county for such terms as are provided by Act No. 194, H. 519, approved September 30, 1959 (Acts 1959, p. 730); and at the expiration of the term of the incumbent board chairman, the members of the board shall elect a chairman from among their own number, to hold office for such term as the board may prescribe."

Act No. 194, supra, provides that a member for District No. 4 shall be elected at the general election in November 1960, and every six years thereafter; and a member for District No. 1 and a member for District No. 2 shall be elected at the general election in November 1962, and every six years thereafter; and a member for District No. 3 and a member for District No. 5 shall be elected at the general election in November 1964, and every six years thereafter.

The number and terms of members of the Board of Education of Autauga County are therefore fixed by law. It will take action by the Legislature to change either the number or their terms of office.

One is still a member of the Board even though a school is not located in the District from which he is elected.

It results that Question No. 1 is answered in the negative.

The authority to consolidate school districts and the method is found in Section 264, et seq., Title 52, Code of Alabama 1940, Recompiled 1958. It is suggested that you refer to these sections as they are too lengthy to set forth herein. This is in answer to Question No. 2.

In answer to Question No. 3, it is my opinion that if the school tax districts were reduced by consolidation, or otherwise, to three (3), nevertheless, the Board would continue to be five (5) in number and elected from the school districts as they existed when Act No. 194, supra, became effective. Any change from the above would have to be made by the Legislature.

Yours very truly,

MacDONALD GALLION
Attorney General

March 1, 1968

Honorable Nelson Allen
Judge of Probate
Walker County
Jasper, Alabama

Taxation—Filing Tax—Mortgages.

No filing tax due under Section 619, Subsection (f), Title 51, Code of Alabama 1940, Recompiled 1958, for recording amendment to mortgage, where the original mortgage has

never been active, and has lain dormant, under facts discussed.

Opinion by Assistant Attorney General Payne.

Dear Sir:

Your letter of January 15, 1968, requesting opinion of this office is as follows:

> "On June 4, 1967, Bienville Mortgage Corporation filed in this office a mortgage signed by Odie Stockman in the amount of $10,750.00, on which amount mortgage tax was charged. This mortgage was dated April 15, 1967 and the first payment was due 'on the first day of July 1967 * * * and the final payment * * * shall be due on the first day of June, 1997.'
>
> "We also enclose a copy of an amendment to mortgage just received for record, which states:
>
> " 'The date on which the first monthly installment shall fall due is amended to read on the first day of February, 1968, and the date on which the final monthly installment payment shall fall due is amended to read on the first day of January, 1998.'
> "This instrument also contains the following provisions:
>
> " 'Contemporaneously herewith, the said mortgagors are delivering to the said mortgagee a new promissory note evidencing the indebtedness secured by said mortgage, as hereby amended, in the same principal amount * * *'
>
> "Will you please advise us if the amendment is subject to mortgage tax under your opinion to us dated November 22, 1967, in which you state, in part:
>
> " 'When the time of payment of the indebtedness secured by, or the securing of which is evidenced by, any such instrument is extended or renewed, and the extension or renewal contract is offered for filing, the tax required by this section shall be paid on the amount extended * * * .'
>
> "Since apparently nothing has been paid on the original mortgage, would the entire amount of tax now be due on the amendment?"

At the outset, it is obvious from your letter and the enclosed "AMENDMENT TO MORTGAGE," that no action whatsoever has been taken by the parties on the mortgage executed by them on April 15, 1967, and recorded in your office on June 4, 1967. The parties remain the same as does the original amount secured in the sum of $10,750.00. You asked advice as to whether or not the mortgage filing tax is due upon the recordation of the instrument described as "AMENDMENT TO MORTGAGE" under Subsection (f), Section 619, Title 51, Code of Alabama 1940, Recompiled 1958. This section is as follows:

> "(f) **When the time for the payment** of the indebtedness secured by, or the securing of which is evidenced by, any such instrument **is extended or renewed,** and the extension or renewal contract is offered for filing or for record, **the tax required in this section shall be paid on the amount of indebtedness so extended or renewed;** and the same shall be governed in all respects by the provisions of this article . . . ."

It is common knowledge that when mortgage agreements are made and become operative, that it is necessary from time to time to make adjustments in the amount of payments, renewal of the mortgage and the extending of the time for payment of the mortgage indebtedness. It is equally well known in this field that mortgages are often modified and extended by the parties on more than one occasion. These things are more or less routine in this field of the business world. Consequently, it is fair and reasonable to assume that when the Legislature enacted Subsection (f), Section 619, Title 51, supra, it was cognizant of this situation.

With the above in mind, as I see it, when the Legislature enacted Subsection (f) of Section 619, supra, it contemplated the extension or renewal in the time for the payment of the mortgage indebtedness, a mortgage that was active and operative, as distinguished from one on which no act or acts whatsoever had been taken. This to me seems reasonable, for how can a "time" be extended that never has actually begun? It is my conclusion that the legislative intent was to make the words "extended or renewed" to apply in a case of an active mortgage where the terms thereof with respect to time of payment had already begun. I think this is logical and it has support in Volume 15A, Words and Phrases, Page 598, where it is stated:

> "The word 'extend,' both by etymology and by common usage, is an exceedingly flexible term, lending itself to a great variety of meanings, **which must in each case be gathered from the context,** which is owing to the fact that it is essentially a relative term, referring to something **already begun;** hence, in a concrete sense, it has no persistent meaning, although abstractly it always implies increase or amplification as distinguished from **inception;** as, for instance, 'the extension of a man's business,' . . . **or 'of the due time of his debts . . . .'"** [Emphasis supplied. Citations omitted.]

In the case at hand, from the facts set out above, there have been no payments made on the mortgage and the parties have mutually allowed the mortgage to lie **dormant** from the date of its execution in April, 1967, to the 28th day of December, 1967, date of execution of the "AMENDMENT TO MORTGAGE." At the time of your request (January 15, 1968), there had not been any action on the mortgage and no payments. The only purpose of the Amendment was to **substitute** the date or time when the **"first"** monthly payment was to become due and, consequently, the date for payment of the last installment. The Amendment reads, in part:

"WHEREAS, it is the desire of said Mortgagors, and the Mortgagee is willing to consent thereto, to change the date of the first and the last monthly installment payments on said loan; and . . . .

. . . . . .

"1. The date on which the first monthly installment shall **fall** due is amended to read on the first day of **February, 1968,** and the date on which the final monthly installment payment shall fall due is amended to read on the first day of **January, 1998.**"

I have a letter of January 19, 1968, from the President of Bienville Mortgage Corporation, the mortgagee in this matter, in which he explains the circumstances relating to delay in activating the mortgage. It is stated in substance that the first payment date is set at a point where it is anticipated that construction will have been completed and the mortgagor will have been able to move into the property. He then explains:

"If construction is somehow delayed, then as a courtesy to the mortgagor, and without legal obligation to do so, we reset the date of the first payment by amendment such as that described in the letter to you.

"This does not involve any new extension of credit or any refinancing. It is a modification of the payment schedule **prior to commencement of making any payments on the part of the mortgagor.**" [Emphasis added.]

The opinion of this office to you dated November 22, 1967, is distinguished from the case at hand upon the facts. That opinion was based upon facts where payments had been made on the mortgage and there was a reduction in the monthly payments to be made and an extension of time, etc. There is no analogy there to the facts here. I have been unable to find an opinion of this office based upon the facts in this case; the opinions on the subject indicate that there have been some actual change in the mortgage terms due to action and agreement of the parties.

In view of what has been stated and indicated above, it is my opinion that this case is not within the contemplation of Section 619, Subsection (f), supra, and, hence, no filing tax is due on the instrument presented to you for recordation. By way of caution, it should be borne in mind that this opinion is not one of general application but is limited to the facts as indicated.

Very truly yours,

MacDONALD GALLION
Attorney General

March 4, 1968

Honorable Conrad M. Fowler
Chairman, Shelby County Board
of Revenue and Control
Columbiana, Alabama 35051

Ad Valorem Taxes—Taxation—Exemption.

Industrial plants or factories may not be granted exemption from county ad valorem taxes under Title 51, Section 3, Code of Alabama 1940, as amended, where application for the exemption is made after the attachment of the tax lien on October 1 to the completed plant or factory.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion dated February 15, 1968, is as follows:

> "I enclose a copy of petition for exemption from county ad valorem taxes within the provisions of Section 3, Title 51, Code of Alabama 1940. The petition was filed by Lawler Manufacturing Company, Inc., on February 10, 1968.
>
> "You will note that the petition seeks exemption within the provisions of the above statute for a manufacturing plant, the construction of which was begun in 1966 and completed in March, 1967.
>
> "Please advise if the Shelby County Board of Revenue and Control has authority to grant the exemption sought by this petition."

From the facts stated in your request, the construction of the plant was completed in March 1967, and the petition for exemption from county ad valorem taxes under Title 51, Section 3, Code of Alabama 1940, as amended, was filed with the Shelby County Board of Revenue and Control on February 10, 1968. A lien for ad valorem tax attached on the plant and property of the petitioner on October 1, 1967. See Title 51, Section 884, Code of Alabama 1940.

In Quarterly Report of the Attorney General, Volume 64, page 37, it is stated:

> "It is true that Section 4 of Title 51, supra, does not explicitly give importance to the tax lien; but a reasonable construction of that section requires that the property be in existence and subject to taxation, in the sense that a lien has attached, before the taxpayer is barred from effective application for exemption.
>
> **"This is not to say that a taxpayer, who has not applied for exemption before the attachment of a tax lien for one tax year,**

may present his application in time for the next tax year. Once a tax lien has attached for any tax year, the application for exemption comes too late.

"A comparison between the language of Section 4, supra, and Section 7 of Title 51, is important. Section 7 uses the phrase, 'owing or controlling or proposing to own or control any such factory * * *.' Section 4, supra, uses the phrase, 'proposed to locate.' There does not appear to be any reason for the distinction in phraseology between the two sections. Section 4 sets out the method for obtaining the Section 3 exemption, and Section 7 sets out the method for obtaining the Section 6 exemption. **It seems reasonable to construe both sections as meaning that an exemption must be made under either section before the tax lien has attached. In such case, the application is timely. Otherwise, it is too late."** (Emphasis added.)

In view of the above, it is my opinion that it is now too late for the Shelby County Board of Revenue and Control to grant Lawler Manufacturing Company the exemption from county ad valorem tax authorized by Section 3, supra. Quarterly Report of Attorney General, Volume 56, page 8 and opinions cited therein; Quarterly Report of Attorney General, Volume 122, page 18.

Very truly yours,

MacDONALD GALLION
Attorney General

March 6, 1968

Honorable Ernest Stone
State Superintendent of Education
State Office Building
Montgomery, Alabama 36104

Schools—County Boards of Education—Funds.

1. Cullman County Commission on Education may not legally pay attorney's fee incurred by school principal in suit by teacher against principal for his act in recommending that her services be terminated at close of 1966-67 year.

2. Public school funds may be expended only as expressly or impliedly authorized by law.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion dated February 26, 1968, is as follows:

"I have received a letter dated February 20, 1968, from Mr. Hollis Tucker, Superintendent, Cullman County Schools, relative to reimbursement to a local school principal by the Cullman County Commission on Education for legal fees growing out of a teacher tenure trial.

"The letter from Mr. Tucker reads as follows:

" 'In May of 1967, the Commission on Education passed a resolution to terminate the services of a teacher who was regularly certified but who was not on tenure. This teacher took her case to court and the court ruled that she should be reinstated on the basis of the resolution not having been recorded in the permanent minute book at the time a copy of the resolution was delivered to said teacher.

" 'This teacher then brought suit against the principal for having recommended that her services be terminated at the close of the 1966-67 year.

" 'The principal secured a lawyer. The case was settled out of court but the principal will have to pay the lawyer.

" 'Can the Commission on Education pay the lawyer's fee out of public school funds?

" 'It will be appreciated if you will give us a ruling on this as soon as possible.'

"I shall appreciate it if you will supply us with an opinion as to the legality of such an expenditure by the Cullman County Commission on Education."

County boards of education are creatures of statute, charged with the duty of devoting public funds to ends prescribed by law, and can make only such disbursements as are expressly or impliedly authorized by statute. Every such board must point to a "thus saith the law" for every disbursement and unless a given charge on such fund is expressly or impliedly authorized it cannot be lawfully incurred. **Woodruff v. Beeland,** 220 Ala. 652, 127 So. 235. In this case I find no such authority.

It appears that the teacher brought suit against the principal for **his act** in recommending that the teacher's services be terminated at the close of the 1966-67 year.

The case was settled out of court; the terms of settlement do not appear in your request.

From the facts before me as stated by you, I am of the opinion that the lawyer's fee incurred by the principal may not be legally paid by the Cullman County Commission on Education created by Act No. 18, General Acts 1955, page 45. Biennial Report of Attorney Gen-

eral 1934-36, Page 256; Quarterly Report of Attorney General, Volume 48, Page 260.

Yours very truly,

MacDONALD GALLION
Attorney General

March 6, 1968

Honorable Ernest Stone
State Superintendent of Education
State Office Building
Montgomery, Alabama 36104

City Board of Education—County Boards of Education—Schools—State Board of Education—Teachers.

Leaves of absence with pay for teachers employed by the city and county boards of education while schools are in session are limited to that provided under Title 52, Sections 136 and 197, Code of Alabama 1940, Recompiled 1958 (1965 Cumulative Pocket Part), for sickness and other unavoidable causes.

Opinion by Assistant Attorney General Webb.

Dear Dr. Stone:

I have your letter of February 16, 1968 in which you request an opinion as follows:

> "We have received several questions from superintendents concerning the matter of personal leave for teachers. Some local Boards of Education have set policies allowing personal leave under certain conditions and for a limited number of days. In order to clarify this matter, we request that you give us an opinion on the following two questions:
>
> "1. Do local Boards of Education have the authority to grant personal leave with pay to the teachers whom they employ?
>
> "2. Does the State Board of Education have the authority to establish a policy for personal type leave other than sick leave?
>
> "Your answer to the above questions will be greatly appreciated."

Title 52, Section 136, Code of Alabama 1940, Recompiled 1958 (1965 Cumulative Pocket Part), reads as follows:

> "The county board of education shall have the authority, under such rules and regulations as may be promulgated from time

to time by the state board of education to provide for the payment from public funds of teachers or other employees of the county board of education who are employed by the year for not over two weeks which said teacher or employee may be allowed by said board as a vacation, but such vacation must not be allowed during the time the schools are in session; and to provide leaves of absence during the time the schools are not in session for such teachers and employees on part or full pay when such teacher or employee devotes such leave of absence to instructing in or attending schools for teacher training or in such manner as approved by the state board of education as beneficial to the educational work of the county; and to provide for the payment of any teachers, whether employed by the year or not, for absences during the time schools are in session where such absence results from sickness or some other unavoidable cause which prevents such teacher from discharging his duties; provided that pay for such absence caused by sickness shall not be allowed for a longer time than forty-five days during any one year and pay for such absences resulting from unavoidable causes other than sickness shall not be allowed for a longer time than one week during any one year, and the allowance of any such pay shall at all times be in the discretion of the county board of education."

Of like wording and purpose is Title 52, Section 197, Code of Alabama 1940, Recompiled 1958 (1965 Cumulative Pocket Part), providing leave for teachers employed by the city boards of education.

It is my understanding that your request deals with personal leave granted during a time when schools are in session. Sections 136 and 197 of Title 52, supra, are the sole authority granted by law for paid leaves of absence of such teachers other than the sick leave provisions of Title 52, Section 40(4), Code of Alabama 1940, Recompiled 1958, not herein applicable.

I am of the opinion that the sections above-quoted provide the various boards of education, city and county, under such rules and regulations as may be promulgated by the State Board of Education, authority to grant, in its discretion, paid leaves of absence for teachers on account of sickness not exceeding forty-five days during any one year and leaves of absence for teachers on account of unavoidable causes, other than sickness, for a period not exceeding one week during any one year.

I, therefore, answer your questions in this manner: The only type leaves of absence with pay authorized while schools are in session are sick leave and leave for other unavoidable causes. There is no "personal leave" if by that term you intend vacations and the like authorized.

Very truly yours,

MacDONALD GALLION
Attorney General

March 8, 1968

Honorable Winford B. Smith
Judge of Probate
DeKalb County Courthouse
Fort Payne, Alabama 35967

Filing Tax—Uniform Commercial Code—Judges of Probate —Secretary of State.

1. Amendments to original financing statement that describe new or additional security and that incur new and/or additional indebtedness must contain the same information as original financing statements, and conform to the provisions of Section 9-402 of the Uniform Commercial Code.

2. Where such amendments are filed with the judge of probate, mortgage privilege tax must be collected by the judge of probate on the amount of new and/or additional indebtedness incurred therein.

3. It is incumbent upon the party seeking to file such amendment to indicate in same the amount of such new and/or additional indebtedness so that the judge of probate can determine the amount of tax due.

Opinion by Assistant Attorney General Hart.

Dear Judge Smith:

I have your letter of February 27, 1968, which is as follows:

> "I would like to inquire about a problem which has come up in our office regarding the Uniform Commercial Code. It appears that some lenders when they make a new loan are filing an amendment (Form UCC-3) showing a new vehicle on an old mortgage, instead of filing a new UCC-1 form. Our question is whether we should accept these for recording and, if so, what to do about charging mortgage tax. We are given no information at the time of any of these filings as to the amount of the new loan. Copies of a financing statement and an amendment of the type we are referring to are enclosed."

You have enclosed copies of two forms, one of which purports to be a Uniform Commercial Code Amendment Form 3, listing one Jim Gifford as debtor and General Motors Acceptance Corporation as secured party. This amendment contains the signature of Jim Gifford as debtor. It does not contain the signature of the secured party (who in this case also is assignee), nor does the instrument explain why.

This instrument purports to be an amendment to financing statement bearing File No. 3337 filed in DeKalb County, Alabama, on August 31, 1967. New and additional chattels are described in said amendment indicating that new and/or additional indebtedness has been in-

curred therein without indicating the new or additional indebtedness secured by the amendment. The judge of probate has no information of the amount on which to collect the mortgage tax, as required by Title 51, Section 619, Code of Alabama 1940, Recompiled 1958, as amended.

Section 9-402(4), Uniform Commercial Code, makes it clear that amendments to an original financing statement must contain the same information as the original financing statement. Since Title 51, Section 619, supra, requires the collection of mortgage tax when an original financing statement is filed with the judge of probate, it follows that an amendment describing new or additional security and indicating new and/or additional indebtedness is also subject to mortgage tax. It is incumbent upon the party seeking to file such amendment to indicate the amount of such new and/or additional indebtedness so that the judge of probate can determine the amount of tax due.

When an amendment, adding new and additional security and incurring new and/or additional indebtedness is filed, either with the Secretary of State or judge of probate, such amendment must meet the minimum legal requirements of Section 9-402, Uniform Commercial Code. This would be true whether the parties chose to use a UCC-3, a UCC-1, or a separate amendment agreement.

I am of the opinion that the instrument in question, standing by itself, is legally insufficient for notice filing as required by Section 9-402, Uniform Commercial Code, inasmuch as this instrument does not contain the signature of the secured party. You should therefore return the same to the party seeking to file said instrument so that he may correct same by having the signature of the secured party placed thereon and by vindicating thereon the amount of new and/or additional indebtedness. When said instrument has been so corrected and returned to your office, said mortgage tax would then be due, as outlined above.

Very truly yours,

MacDONALD GALLION
Attorney General

March 11, 1968

Mr. Dan A. Dennis, Jr.
Secretary
Alabama State Board of Pharmacy
1300 Arlington Street
Mobile, Alabama 36605

Pharmacists—Physicians—Officers and Offices—Drug Stores—Inspection.

1. State Drug Inspectors may, in the performance of their duties, inspect the offices and prescription de-

partments of nursing homes and hospitals licensed by the State Board of Health.

2. State Drug Inspectors may not, in the performance of their duties, inspect the offices of doctors of medicine, this being a function of the Inspectors for the State Board of Health.

Opinion by Assistant Attorney General Tyson.

Dear Mr. Dennis:

Your recent inquiry for an official opinion of this office is as follows:

"At a Special Meeting of the Alabama State Board of Pharmacy held in Birmingham, January 21 and 22, 1968, I was instructed to request an opinion from the Attorney General's Office regarding a possible conflict between Act #205, Section 7, Special Session of the Legislature, 1966 and Act 252, Sections 6 and 7, Regular Session 1967.

"Under Act #205, Section 7, Drug Inspectors for the Board of Pharmacy are not permitted to inspect offices of Doctors of Medicine.

"Under Act 252, Sections 6 and 7, the Drug Inspectors for the Board of Pharmacy are charged with enforcement of the Act and in addition, given power of arrest.

"The question is: Do the Drug Inspectors for the Board of Pharmacy have the authority to inspect the offices of Doctors of Medicine and/or Nursing Homes and Hospitals, which are licensed by the State Board of Health?

"If there is a conflict between the two Acts, which one takes precedence where the Board of Pharmacy is concerned?"

In pertinent part Section 7, Act No. 205, 1966 Special Session of the Alabama Legislature, being the new State Pharmacy Act, is as follows:

". . . Each State Drug Inspector shall have the power to inspect the medicines and drugs or drug products or domestic remedies which are manufactured, packaged, packed, made, sold, offered for sale, exposed for sale or kept for sale in this State, and for this purpose shall have the right to enter and inspect during business hours any pharmacy or any other place in this State where medicines or drugs or drug products or proprietary medicines are manufactured, packaged, packed, made, sold, offered for sale or kept for sale, whether or not licensed by the State Board of Pharmacy. Each State Drug Inspector shall be subject to the same restrictions as other officers of the law in regard to search and seizure. They shall report to the Board all violations of the laws relating to pharmacy and all rules

and regulations of the Board. As directed by the Board, it shall be the duty of the State Drug Inspectors to issue citations for violations of such laws, rules or regulations or institute criminal proceedings against persons for such violations. When authorized by the Board and where they are specific complaints, the State Drug Inspector shall have the right to inspect all records, shipping tickets or any other document pertaining to the transfer of drugs or drug preparations, from or to hospitals, pharmacists, wholesale establishments, and maufacturers, or any other place or establishment where said preparations of drugs are kept or stored. They shall have the authority to inspect all prescription files, prescription record books, poison registers, exempt narcotic registers, and any other records pertaining to the filling and filing of prescriptions. It shall be the duty of the State Drug Inspector to take possession of all revoked and/or suspended licenses and permits when such licenses and permits are not surrendered voluntarily to the Board by the person or pharmacist whose licenses or permit has been revoked or suspended. Nothing in this Act shall authorize or require the State Drug Inspector or State Drug Inspectors to inspect the offices of doctors of medicine who have duly qualified with the State Board of Medical Examiners."

Sections 6 and 7, Act No. 252, 1967 Regular Session of the Alabama Legislature, being the recently enacted Alabama Drug Abuse Control Act, are as follows:

"Section 6.

"The authority to promulgate regulations for the efficient administration and enforcement of this Act is hereby vested in the State Board of Pharmacy.

"Section 7.

"ENFORCEMENT OF LAW.—It shall be the duty of the State Board of Pharmacy and its drug inspectors to enforce all provisions of this Act. The drug and narcotic agents and inspectors of the Department of Public Health and all peace officers of the state and all prosecuting attorneys are charged with the enforcement of this Act. The drug inspectors of the State Board of Pharmacy and the drug and narcotic agents and inspectors of the Department of Public Health shall have the powers of peace officers in the performance of their duties."

The several chapters, titles and sections of the 1940 Code, as Recompiled 1958, are in pari materia, each having a field of operation, and must be so construed. **Jenkins v. State,** 245 Ala. 159, 16 So. 2d 314. Also **Jefferson County v. City of Birmingham,** 221 Ala. 476, 129 So. 48.

This office is of the opinion that under the foregoing statutes that the State Drug Inspectors may, in the course of carrying out their

duties as Drug Inspectors, inspect the offices and records of pharmacists kept in nursing homes and hospitals which are licensed solely by the State Board of Health. This office is also of the opinion that inspections of nursing homes and/or hospitals may be carried out by State Drug Inspectors or by or in cooperation with Inspectors of the State Board of Health or other law enforcement agencies.

This office is further of the opinion that State Drug Inspectors may not inspect the offices of doctors of medicine in the course of carrying out their duties, since such is expressly prohibited by Section 7, Act No. 205, 1966 Special Session of the Alabama Legislature. Act No. 252, 1967 Regular Session of the Alabama Legislature, did not change this or grant the State Drug Inspectors greater authority in this respect. This office does not consider the two Acts in question as being in conflict since the inspection of offices of doctors of medicine is properly a function for the Inspectors for the State Board of Health.

I trust this answers your inquiry.

Yours very truly,

MacDONALD GALLION
Attorney General

March 12, 1968

Honorable Kenneth G. Hawthorne
Administrator
Athens-Limestone Hospital
105 Sanders Street
Athens, Alabama

Accountants and Accounting—Funds—Hospitals—Words and Phrases.

The fiscal year of all public agencies of the State and and its principal subdivisions runs from October 1 to September 30.

Opinion by Assistant Attorney General Webb.

Dear Mr. Hawthorne:

I have your request for an opinion under date of February 12, 1968, which reads as follows:

> "On behalf of the Athens-Limestone Hospital Board of Trustees, we would like to have your opinion on changing our fiscal year ending. Instead of our fiscal year running from October first to September 30 each year as Alabama law states, we would like to run from July first to June 30. There are certain dis-

tinct advantages to the Hospital operating on a June 30 fiscal year as are indicated as follows:

> "The cost report for Medicare must be prepared by our personnel on a fiscal year ending June 30. The Blue Cross cost study will also be made on this fiscal year. The difference in fiscal years require that three months of our previous year's revenues and expenses be added to the current year's (nine months) revenues and expenses in an entirely separate procedure. Accordingly, the cost statements for Medicare and Blue Cross are not easily compared with our audited financial statements or monthly financial reports.
>
> If the Hospital were on a June 30 fiscal year, it is probable that more accurate cost reports would result since the physical inventory and other year-end work would be performed at that time; the data for the reports would be taken directly from the accounting records without involving another fiscal year; and the involvement of our personnel with outside accountants and auditors would be limited to one set of figures.
>
> "Since the State auditors do not usually audit our books within the first or second month following our present fiscal year end it probably will not make any difference to them."

I am of the opinion that the fiscal year for all public agencies, including hospitals owned or operated by the State or any of its subdivisions, must be from October 1 to September 30. In this regard, your attention is invited to the provisions of Title 1, Section 13, Code of Alabama 1940, Recompiled 1958, which reads as follows:

> "The fiscal year of the government shall commence on the first day of October and end on the thirtieth day of September.
>
> This fiscal year shall be used for purposes of making appropriations and of financial reporting and shall be uniformly adopted by all departments, institutions, bureaus, boards, commissions and other state agencies."

For like intent and purpose, note Title 12, Section 91, and Title 52, Sections 1 and 234, Code of Alabama 1940, Recompiled 1958.

The term "government" is a very comprehensive term and includes the affairs of a state, community, or society. It is all inclusive. See Words and Phrases, Volume 18A, page 241, et seq.

Very truly yours,

MacDONALD GALLION
Attorney General

March 20, 1968

Honorable William F. Black
Attorney
Alabama Public Service Commission
State Office Building
Montgomery, Alabama

Alabama Public Service Commission—Words and Phrases—Opinions Overruled.

1. Liquid fertilizer is exempt from the provisions of the Alabama Motor Carrier Act.

2. Wood chips used in the pulp and paper manufacturing process are not exempt from the Alabama Motor Carrier Act.

3. The opinion of the Attorney General found in Volume 95, p. 22, is overruled.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an opinion of this office bearing date of February 20, 1968, is as follows:

> "We will appreciate it if you will give us an official opinion on the following questions:
>
> "1. Is liquid fertilizer exempt from the provisions of the Alabama Motor Carrier Act of 1939, Title 48, Code of 1940, Section 301(2)?
>
> "2. Are shipments of wood chips exempt from the provisions of the Alabama Motor Carrier Act of 1939, Title 48, Code of 1940, Section 301(2)?
>
> "Wood chips may either be a product of a sawmill as a result of the processing of logs into lumber, or may be a by-product of a paper mill resulting from processing of pulpwood."

Title 48, Section 301(2),A.(3), Code of Alabama 1940, Recompiled 1958, as amended, provides, in pertinent part, as follows:

> "This article shall not be construed to apply to: * * * motor vehicles if engaged in hauling * * * pulpwood, * * * ."

You will note that the word "fertilizer" is used in the above quoted Code section. The statute does not differentiate between dry fertilizer and liquid fertilizer in using this term, and I must conclude that the Legislature did not intend to make any distinction between dry and liquid fertilizer.

Furthermore, the Supreme Court of Alabama in **State v. Bankhead Mining Co.**, 279 Ala. 566, 188 So. 2d 527, said:

> " 'Fertilizer' is any substance applied to the earth for the growth of plants. Webster's Int. Dic., 2nd. Ed., p. 1800; State v. Flowerwood Nursery, Inc., 256 Ala. 426, 55 So. 2d 130."

Hence, I am of the opinion that liquid fertilizer is exempt from the provisions of the Alabama Motor Carrier Act found in Title 48, Chapter 3, Article 3, Code of Alabama 1940, Recompiled 1958, as amended.

Your second question asks if "wood chips" would also be exempt from the Alabama Motor Carrier Act, supra.

In Section 301(2), A. (3), the pertinent language applicable to your second question would be "pulpwood."

We then must determine if "wood chips" can be classified as "pulpwood" so as to be exempt from the provisions of the Alabama Motor Carrier Act, supra.

I am advised by pulpwood dealers that wood chips are being used more and more by pulp and paper manufacturers for the reason that wood chips are easier for the mills to process and there is less loss from drying and rotting of wood chips than of round wood or pulpwood logs.

They further advised me that in the beginning, wood scraps were chipped by sawmills and sold as wood chips, but that at the present this sort of use is a very small part of the wood chips used by pulp and paper manufacturers. The bulk of the wood chips now are made from the logs by special machines developed for that purpose. The chips are then shipped to the factory in specially built railroad cars.

It would appear that wood chips are in fact pulpwood, and I might add are so treated by the pulpwood industry.

However, the Supreme Court of Alabama in **State v. Int. Paper Co.,** 163 So. 2d 607, in construing the State's Forest Products Severance Tax Act, (Title 8, Section 231(4), Code of Alabama 1940, Recompiled 1958) held that wood chips made from slabs, edging or residue of the sawmill process were not pulpwood within the meaning of the Severance Tax Act.

Although the Supreme Court was construing a tax statute, and such statutes are generally construed most strongly against the taxing authority, the court added other language that leads me to the conclusion that wood chips cannot now be construed as pulpwood. The Supreme Court phrasing to which I refer is:

> " * * * Another accepted rule of statutory construction is that, where there is nothing to indicate to the contrary, words in a statute will be given the meaning generally accepted in popular, every-day usage **at the time of the passage of the statute** * * * ." (Emphasis supplied)

The Supreme Court went on to say that at the time of the passage of the Severance Tax Act, wood chips, as such, were unknown to pulpwood dealers.

The same is true for the Alabama Motor Carrier Act. At the time of its adoption in 1939, wood chips were unknown to pulpwood dealers; and my information is that wood chips were not even shipped by pulpwood dealers until the latter part of the 1950's.

Therefore, I must conclude, especially in view of **State v. Int. Paper Co.**, supra, that wood chips cannot be classified or considered as pulpwood so as to be exempt under the Alabama Motor Carrier Act.

The opinion of the Attorney General found in Volume 95, page 22, is hereby overruled.

Very truly yours,

MacDONALD GALLION
Attorney General

March 27, 1968

Honorable James E. Moore
County Attorney
Mobile County
Mobile, Alabama

Honorable Lee M. Otts
County Attorney
Escambia County
Brewton, Alabama

Bids—Contracts—Counties—Elections—Voting Machines.

1. Voting machines are subject to competitive bid. Act No. 217, Special Session 1967.

2. Specifications for bids must be sufficiently certain and definite to secure a fair basis for competitive bidding and should contain nothing that would otherwise prevent or restrict full and free competition.

3. Specifications must be reasonably related to the job to be performed.

4. Counties having only one type of voting machine may, under facts, restrict purchase to the type possessed.

5. Counties having more than one type of voting machine or no machines may not restrict purchase specifications to one type of machine.

Opinion by Assistant Attorney General Webb.

Gentlemen:

Your separate requests for opinion have been received. Due to the similarity in the requests, I have combined into one letter my opinion on this matter.

"The County commission of Mobile County has asked me to request your advice as to whether the 1967 Bid Law applies to the purchase of voting machines.

"Section 2 of the Act excludes from its coverage 'the purchase of ballots and supplies for conducting any primary, general, special, or municipal election', and we are wondering if voting machines fall within this category. In Mobile County we use two types of voting machines, the Shoup and the Automatic, both of which cost well over $500.00 per machine.

"We will appreciate your official advice as to whether these purchases are covered within the Bid Law."

Mr. Ott's letter of March 5, 1968 reads as follows:

"Escambia County now owns forty-one voting machines, all of them being Automatic Voting Machines. It has been determined that the county needs seven additional machines to properly cover the county for future elections and it is believed that this will be the maximum number needed for the next several years. We realize that due to the amount involved a purchase such as this would be subject to requirements of the state law and also local laws covering Escambia County, which provide that bids must be requested. In this particular situation, however, we feel that an exception should be made if possible. As pointed out, all of the present machines are of one type and if by requesting bids the county should have to purchase machines of a different type it would be very unpractical and expensive. The election costs would be increased because of the difference in printing the ballots, the custodian would have to be trained in the preparation of a different type machine, the county would have to maintain parts and supplies for two different type machines and last but not least, it would cause considerable confusion among the voters who are just now becoming used to voting machines.

"We would like your opinion as to whether the purchase of these voting machines could be considered a 'noncompetitive' item and could be purchased on a negotiated rather than a bid basis. We would also like to know if this would apply if the county should decide to lease the machines or enter into a lease-purchase agreement rather than a direct sale.

"As the date for the election is drawing near and as it will take several weeks to obtain the machines after the order is placed, an early reply would be greatly appreciated."

Mr. Moore's letter of March 12, 1968 reads as follows:

"On February 24, 1968, I wrote your office requesting your opinion whether the new Bid Law passed by the legislature in 1967, Act No. 217 applies to the purchase of voting machines by

Counties. If you hold that the Bid Law does cover the purchase of voting machines, then please advise with regard to the following circumstances. In Mobile County we use two types of machines, one is the Shoup voting machine and the other is known as the Automatic voting machine. The Shoup machine has the rows for party and candidates running vertically while the Automatic has these rows running horizontally, and the two machines are operated differently from each other.

"It has been the practice in this County not to mix the two machines in any one precinct or ward, in order to avoid confusion which might result from the difference in the arrangement and operation of the machines as above stated. The County has largely used the Automatic machines in the rural precincts and the Shoup machines in the city wards.

"It is conceivable that under this procedure the County may from time to time have need of additional machines of one special type or the other. In the above circumstances, would it be permissive for the County Commission to ask for bids on specifications built around one of these machines to the exclusion of the other?

"If your answer is in the affirmative, then if there is only one Dealer for the type machine desired, would it be necessary to take bids or would the County be authorized to negotiate such purchase?"

Act No. 217, Special Session 1967, requires that any purchase or contract of more than $500.00 be let on competitive bids. Exempt under Section 2 of Act No. 217, supra (as amended Act No. 769, Regular Session 1967), are the purchase of " . . . . ballots and supplies for conducting any primary, general, special or municipal election. . . ." In my opinion, voting machines are not ballots or supplies for conducting elections but, rather, are equipment and, as such, are not exempt from the provisions of Act No. 217, supra.

Your questions, therefore, revolve primarily around the problem of proper use of restrictive specifications or brand names in such a manner so as to eliminate competition. This problem, in general, has been dealt with under an opinion of this office to Honorable Cliff Evans, Commissioner of Public Works, City of Montgomery, dated January 17, 1968, wherein it was held:

"For your information and guidance, I would quote with approval the following two general statements of law found in American Jurisprudence and Corpus Juris Secundum on this particular subject:

" 'The scope of the terms and conditions that may be included are determined by the power and authority of the political unit for which the work is to be done. They must, however, be sufficiently certain and definite to secure a fair basis for com-

petitive bidding, and should contain nothing that would otherwise prevent or restrict full and free competition . . . .' 48 Am. Jur. 776 (Public Works Contracts, Section 35).

"'. . . Specifications which stifle competition are objectionable, but it is no objection to the specifications that the material required can be furnished by one party, provided it is readily obtainable in the open market. Specifications must contain no unreasonable requirements. . . ' 20 Corpus Juris Secundum page 1022 (Counties, Section 185).

"In general, it is the opinion of this office that restrictive specifications and brand names should be reasonably related to the work or job to be performed and quality or purpose of the product to be obtained and may not be used to prevent or restrict full and free competition on the open market."

The specifications proposed by your letters not only stifle but actually eliminate competition altogether. However, other facts involving the reasons for this proposal have been furnished. First, it is my understanding that there presently exists on the open market only two types of voting machines designed to meet the requirements of Alabama law: the Shoup machine and the Automatic machine. These machines are handled through district agents and purchases are made directly through the agents and delivered directly from the factories to the purchasers. The machine companies, though competing with each other, permit no competition between their agents and the prices are fixed by the company.

The two machines, though designed for the same job, essentially are entirely different in make, looks and ballot supplies. One machine uses vertical ballots and the other horizontal; the two are not interchangeable. Training is often required for election officials to handle the different machines.

I am also informed by a major ballot supply firm in Alabama that the cost of printing ballots is considerable and that a county using one type of machine would be put to considerable expense if another type machine were added due to the necessity of purchasing both ballots and supplies for the one election.

Under the above facts, I am of the opinion that the additional cost of ballots and other expenses necessitated by the addition of a different type of machine than that presently used by the county should be considered in determining the relative cost of the two machines. This considered, I reach the inescapable conclusion that any county possessing one type of machine should not be put to the burden or expense of seeking competitive bids unless the price of the machine offered was so low as to overcome the additional cost necessitated, both present and future, by the purchase of the different machine. Such a thing is not only inconceivable but virtually impossible. I am, therefore, of the view that bids under such circumstances are not necessary though the file

should be sufficiently documented to show the reason for not seeking bids.

I, therefore, answer Mr. Ott's question in the affirmative. Escambia County, in my opinion, need not seek competitive bids for the purchase of identical machines to that presently used by the county. I also see no distinction between the lease purchase arrangement proposed and the straight purchase with the exception, of course, that the county, due to the financial budget control act must retain the option to discontinue the lease at the end of any fiscal period.

I answer Mr. Moore's question in the negative. In my opinion, a county having more than one type of voting machine or no machines involves no additional expense in the purchase of ballots and other supplies and, therefore, may not restrict the purchase specifications to one type of machine. Though it is recognized the county may have a reasonable basis for seeking only one type of machine in a particular precinct or beat or voting place, it is also recognized that the size of the cities continuously change and that voting places, precincts, and beats are also changed from time to time to meet the continued growth of the cities. I, therefore, see no primary or considerable advantage to be gained by the county in restricting a purchase to one type of voting machine in order to serve a particular voting place, beat or precinct other than convenience. No exception for competitive bids is recognized for convenience. There is no evidence nor is there any claim that either type of machine is inferior or unacceptable because of the inherent differences in its design.

It should be recognized that this opinion is restricted to the facts presented to me at this time. However, it is recognized that the free enterprise system under which we work is a highly competitive one and the factual situation involved in this opinion might very well change in the future.

Very truly yours,

MacDONALD GALLION
Attorney General

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Attorneys—Test Suits	E. H. Graves, Jr.	Jan. 23	307
Bids—Consultants	J. M. Breckenridge	Jan. 23	278
Bids—Councilmen	William H. Tuck	Jan. 30	331
Bids—Lobbyist	J. M. Breckenridge	Jan. 5	278
Bids—Local Concerns	J. T. Stephens	Mar. 26	463
Bids—Unusual Specifications	Henry Neill Segrest	Jan. 23	321
Board of Registrars—Advertising, Etc.	J. Herman Jordan	Mar. 4	435
Board of Registrars—Advertising, Etc.	David C. Akin	Mar. 12	162
Chief of Police—Discharge	W. H. Hines	Mar. 26	451
Conviction—Civil Rights	I. C. Wheelis	Jan. 22	306
Councilmen—Retired Pay	J. B. Rucker	Feb. 9	373
Dothan—Pay Plan	Earle C. Moody	Jan. 30	328
Fines and Costs—Collection	Cecil White	Jan. 24	323
Firefighters—Pension Fund	Walker Hobbie, Jr.	Mar. 19	458
Gasoline Tax—Police Jurisdiction	S. W. H. Williams, Jr.	Feb. 23	411
Gasoline Tax—Traffic Control	Herman Nelson	Mar. 20	H'way
Gasoline Tax—Traffic Control	L. H. Gunter	Mar. 28	462
Government—Abandonment	J. Gilmer Blackburn	Mar. 5	434
Gross Receipts Tax—Occupation	Albert F. Simpson, Jr.	Jan. 12	297
Incorporation—Expenses	J. S. Whigham	Jan. 23	322
Incorporation—Gasoline Tax	Agnes Baggett	Jan. 16	St. Treas.
Industrial Development—Conveyances	Caldwell Snead	Jan. 11	296
Livingston—Zoning Ordinance	W. W. Brown	Feb. 13	396
Livingston—Zoning Ordinance	Ira D. Pruitt, Jr.	Mar. 13	271
Licenses—Renting Property	Ruby C. Neeley	Mar. 12	440

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Mayor's Salary—Vote	Norman K. Brown	Jan. 29	329
Property—Sale of	S. L. Morris	Feb. 21	419
Sesquicentennial—Appropriation	W. W. Malone, Jr.	Feb. 28	423
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OFFICERS AND OFFICES:			
Boards of Equalization—Terms, Etc.	W. F. Joseph, Jr.	Feb. 7	205
City Employee—Councilman	Marjorie Tillman	Mar. 25	454
City Employee—Public Utilities	Robert T. Wilson	Mar. 4	424
City Fire Chief—County Fire Inspector	William C. Gullahorn, Jr.	Feb. 21	415
City Officers—Hospital Association Director	Ira D. Pruitt, Jr.	Mar. 7	271
Councilmen—Board of Equalization	W. E. Stone, Jr.	Jan. 10	281
Fire Chief—License Inspector	William C. Gullahorn, Jr.	Feb. 29	415
Judge of Probate—Financing Statement	Nelson Allen	Mar. 22	163
Mayor—Bus Driver	Lloyd Tippett	Feb. 12	387
Records—Destroying and Duplication	T. C. Almon	Feb. 15	45
Sheriffs—Bonds	J. W. Oakley, Sr.	Jan. 22	176
Supernumerary Tax Collector—Discussion	Robert H. Kirksey	Jan. 10	34
Supernumerary Tax Collector—Discussion	W. C. Johnson	Feb. 5	117
United States President—Term	Thomas E. Winslett, Sr.	Mar. 13	443
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SCHOOLS:			
Appropriations—Educational Study Commission	Harry M. Philpott	Mar. 5	Ed. Dept.
Appropriations—Southern Regional Education	Ernest Stone	Jan. 26	Ed. Dept.
Buses—Torts	Harold R. Collins	Feb. 26	417
Buses—Torts	W. Byron Causey	Feb. 29	35
City—County Board of Education	Thomas W. Carroll	Jan. 16	324
County Boards of Education—Purchases	Hugh H. Williams	Feb. 20	416
Exchange Teacher—Salary	Joe L. Payne	Mar. 22	119

Subject Matter	Addressee	Date	File No.
Leases—Payments	Fred D. Ramsey	Feb. 2	112
State Superintendent—Federal Funds	Ernest Stone	Mar. 28	Ed. Dept.
Students—Eye Tests	Ira L. Meyers	Jan. 16	Health
Transportation—Private Schools	Walter C. Givhan	Jan. 18	303
STATE AND STATE DEPARTMENTS:			
Bearer Bonds—Duplicates	Agnes Baggett	Jan. 29	St. Treas.
Bids—Local Concerns	J. T. Stephens	Mar. 26	463
Employees—Accrued Leave	O. R. Dees	Jan. 18	304
Employees—Air Insurance	G. W. Tobias	Feb. 19	Ex. Accts.
Examiners' Conference—Expenses	G. W. Tobias	Feb. 14	Ex. Accts.
General Contractors—Prefabricated Buildings	Hugh D. Adams	Jan. 22	Bldg. Comm.
Merit System Employees—Candidate	Mary M. Halladay	Jan. 25	315
Pistols—Flag Emblem	Robert E. Wood	Jan. 12	290
Planning Board—Research	Leonard Beard	Mar. 19	Plan. Bd.
Professors—Moving Expenses	Frank A. Rose	Mar. 15	312
Publicity Bureau—Lodging Tax	Martin J. Darity	Mar. 18	Pub. & Inf.
State Motor Vehicles—Torts and Insurance	W. Byron Causey	Feb. 29	35
State Trooper—Appointment	Lurleen B. Wallace	Mar. 25	Gov.
State Trooper—Auxiliaries	Lurleen B. Wallace	Jan. 22	Gov.
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TAXATION:			
Corporate Certificate—Transfer	Hubert E. Lester	Mar. 8	436
Farmer Co-ops—Exemption	Jimmy Adams	Mar. 19	449
Filing Tax—Corporations	Nelson Allen	Mar. 5	163
Filing Tax—Mechanic's Lien	Carl E. Sellers	Jan. 4	177
Filing Tax—Mechanic's Lien	C. H. Stacey	Jan. 5	169
Homesteads—Exemptions	Edward W. Enslen	Jan. 12	314
Interstate Commerce—Warehouse Storage	O. Howard Moore	Feb. 9	369

Subject Matter	Addressee	Date	File No.
Licenses—Engineers	Sarah E. Hines	Mar. 8	Eng. Bd.
Licenses—LP Dealer as Plumber	Robert H. Kirksey	Mar. 6	34
Licenses—Liquefied Petroleum Gas	Bill Cassity	Jan. 31	LP Gas Bd.
Licenses—Physicians	Mabel Amos	Mar. 13	Sec. St.
Licenses—Podiatrists	Douglas O. Benton	Jan. 12	Heal. Arts
Refunds—Error Payments	Louise Champion	Mar. 20	459
Talladega County—Liquor Tax	J. R. Pittard	Jan. 16	325